

AGREEMENT FOR THE MANAGEMENT AND OPERATION
OF THE
JANET GOESKE SENIOR CENTER

JANET GOESKE FOUNDATION

THIS AGREEMENT is made and entered into this ____ day of _____, 2022, ("Effective Date") by and between the CITY OF RIVERSIDE, a California charter city and municipal corporation ("City"), and the JANET GOESKE FOUNDATION, a nonprofit California corporation ("Contractor") with reference to the following facts:

A. On March 3, 2008, the City and the Janet Goeske Foundation entered into an Agreement ("Agreement") for the Management and Operation of the Janet Goeske Center ("Center") located at 5257 Sierra Avenue, Riverside, California, including the building, adjacent parking lot and landscaped grounds ("Center"). The 2008 Agreement supplanted an earlier agreement executed on August 28, 1996.

B. City and Contractor entered into a new agreement on August 9, 2016, and desire to enter into new agreement modifying the terms and conditions of the agreement.

C. The initial construction of the Center was substantially financed by funds granted by the U.S. Department of Housing and Urban Development under its Community Development Block Grant ("CDBG") Program; and in its application for such funds, City certified that the Center would be used to serve senior residents city-wide.

C. The Janet Goeske Center continues to receive funding from the City's annual fiscal year CDBG Program, pursuant to the Housing and Community Development Act of 1974, as amended. This funding must be used according to the provisions of the City's CDBG Subrecipient Agreement, a sample which is attached hereto as Exhibit "A" and incorporated herein by reference.

E. Contractor is a nonprofit public benefit corporation formed to operate a center which provides cultural, health, nutritional and recreational programs and services for seniors, and City desires to employ Contractor to operate its Center to provide such programs and services.

NOW, THEREFORE, the Parties hereto mutually agree as follows:

1. RETENTION OF CONTRACTOR: City hereby engages Contractor to operate the Center and provide programs and services as set forth herein, and Contractor agrees to do so.

2. TERM: The term of this Agreement shall commence as of July 1, 2022, and expire on June 30, 2023, unless sooner terminated as provided for hereinafter. The parties shall have the option to extend this Agreement for two (2) additional two (2) year terms. Any and all extensions must be executed in writing as an amendment to this Agreement.

3. SCOPE OF SERVICES:

(a) Contractor shall operate and manage the Center. Contractor is responsible for providing all personnel, services and materials, including a director and other staff.

(b) At the minimum, Contractor shall develop (as necessary) and provide cultural, health, nutritional and recreational programs and services at the Center.

(c) The clientele includes eligible citizens, meeting Federal or State criteria as seniors. The term "senior" shall mean an individual at least fifty-five (55) years of age, unless Federal regulations designate a lower minimum age.

(d) Contractor shall maintain and repair the Center, except as provided in Section 5. Contractor shall keep the Center in the same condition as when received, normal wear and tear excepted. Maintenance shall include, but not be limited to: janitorial services; and, the maintenance in the attached "Facilities Maintenance Plan and Responsibility" (Exhibit "B"). Contractor may enter into contracts or agreements ("subcontracts") for such work.

(e) Contractor shall establish procedures by which senior service consumers may express their ideas and desires and have input into the area of program development of the Center.

(f) Contractor shall operate the Center at a level consistent with senior centers of similar size and clientele, and provide the services to the maximum extent feasible under the funds available.

4. CONTRACTOR'S AUTHORITY AND RESPONSIBILITIES: Contractor shall have the sole authority and responsibility for the direction and supervision of personnel employed by it. Contractor is an independent contractor. No agent, employee, or servant of either Party shall be deemed to be an employee, agent, or servant of the other Party. Contractor shall be solely and entirely responsible for its acts, contracts, and omissions and for the acts, contracts, and omissions of its agents, employees, servants, and subcontractors. Contractor shall:

(a) Fully comply with all applicable laws and regulations regarding workers' compensation, social security, unemployment insurance, wages, working conditions, and like subjects affecting employees.

(b) Comply with the terms of the CDBG construction and operation Agreements.

(c) Enter into subcontracts in Contractor's name as may be required to perform under this Agreement. Contractor shall not be released from any of its subcontracted obligations under this Agreement. No subcontract shall exceed the term of this Agreement. City, upon demand, shall have the right to inspect and examine any of Contractor's subcontracts for this Agreement.

(d) Procure at its cost and keep in force all permits and licenses required by Contractor or its subcontractors, and pay any other public charge levied upon the Center or upon its

operation; except that any public improvement assessment levied by a governmental agency payable during the Agreement term shall be paid directly by City.

(e) Have the right to collect reasonable and nondiscriminatory rental and use fees for Center facilities, services, or programs, to be used for the operation and management of the Center. Accounting for these funds shall conform to all Federal and State requirements governing nonprofit organizations. Contractor shall submit a report of all such income for each fiscal year to the City's Parks, Recreation and Community Services Director ("PRCSD Director") by the twenty-eighth day of February each year.

(f) Notify the PRCSD Representative of any needed heating and air conditioning systems repairs, structural repairs, parking lot resurfacing or repaving,

(g) On or before January 1 of each year, make recommendations to the PRCSD Director of City for additions of fixtures, furniture, furnishings, and equipment and for capital improvement projects at the Center for the following fiscal year. The fiscal year shall commence on July 1 and end on June 30 of the following year. City is not obligated to make any additions or capital improvements unless it: (i) budgets and obligates funds for such improvements, and (ii) has given written notice through the PRCSD Director of such approval, which notice shall also indicate the approximate date by which such work shall be accomplished by City.

5. CITY RESPONSIBILITIES: City shall be responsible at its sole cost and expense for:

(a) The repair and maintenance of the Center heating and air conditioning systems.

(b) Any structural repairs or improvements deemed reasonably necessary by City according to the Facilities Maintenance Plan and Responsibility.

(c) Any resurfacing of the Center parking lot that City deems reasonably necessary.

(d) To maintain a policy of standard fire and extended coverage insurance on the Center. City waives its rights of subrogation against Contractor and shall use its best efforts to cause its insurer to likewise do so.

(e) If the Center is totally or partially destroyed from any cause, rendering the Center totally or partially inaccessible or unusable, City shall inform Contractor within sixty (60) days whether the Center will be restored. City is in no way obligated to restore the Center.

(f) Electricity service (see 9, below).

(g) Coordinate with Contractor to provide a full page in the department's Activity Guide magazine for the Janet Goeske Center.

6. RIGHT TO INSPECT: City has the right to inspect the Center at any time to ensure that the premises are being maintained in proper order. Any Contractor repairs or maintenance shall be made within thirty (30) days of receipt of City's written notice therefor, or within such shorter

period of time as reasonably determined by City if an emergency.

7. CONTRACTOR'S STRUCTURAL CHANGES TO CENTER: Notwithstanding Paragraph 5 above, Contractor may make structural changes or improvements to the Center at its sole cost and expense, upon the prior written approval of the PRCSD Director. Contractor shall first submit all plans, estimated costs, and funding sources. The PRCSD Director shall promptly review those plans, and approve or deny them in writing. Contractor must still obtain all necessary permits or approvals and comply with any applicable law or ordinance relating to such structural change or improvement.

Upon completion of the changes or improvements, Contractor shall submit to City a list of all improvements, the costs, and complete "as-built" plans. The PRCSD Director may require additional information and supporting documentation concerning the cost of all such improvements.

All such changes and improvements in or attached to the building shall become City property, without compensation.

8. MECHANICS' LIENS: Contractor shall keep the premises free from any and all claims of persons, firms, or corporations who, at the request of Contractor, its officers, employees or agents, furnish labor or material to or for the benefit of the Center.

If the estimated costs of any Contractor improvement to the Center exceeds Twenty-Five Thousand Dollars (\$25,000.00), following plan approval by the PRCSD Director but prior to construction, Contractor shall provide, at no expense to City, good and sufficient bonds, in an amount equal of the cost of such improvements, approved as to form by the City Attorney, securing the full payment by Contractor or Contractor's subcontractors of all labor and materials used for said improvements.

City at any time may post notices at the Center to protect City against the claims of any persons, firms or corporations for work done, labor performed, or materials furnished to the Center. Before commencing construction of any of the required improvements, Contractor shall notify City in writing of the expected work commencement date, so City can post and record notices of non-responsibility.

9. UTILITIES: Contractor shall be responsible for and shall promptly pay when due the monthly charges for all utilities and services, including but not limited to, gas, telephone, and trash removal for the Center, but not inconsistent with the following:

The City shall be responsible for electricity, water, and sewer costs. The electricity, water and sewer bills shall be sent directly to the City, who shall timely pay them.

10. INDEMNIFICATION: Except for the sole negligence or willful misconduct of City, Contractor shall indemnify, defend and save harmless City, its officers, employees and agents from and against all damages, costs, loss or expense, including attorneys' fees, in law or equity that may at any time arise or be set up because of damages to property or personal injury, including death, suffered by reason of any negligent act, error or omission of Contractor or any of Contractor's

officers, employees, subcontractors or agents committed or alleged to have been committed by rendering services under this Agreement or the improper performance of this Agreement. The Parties expressly agree that any payment, attorney fee, cost or expense City incurs or makes to or on behalf of an injured employee under its self-administered workers' compensation program are included as a loss, expense or cost for the purposes of this Section. The provisions of this paragraph shall survive the expiration or early termination of this Agreement.

11. INSURANCE: Contractor shall obtain and maintain, for at least the term of this Agreement, public liability and property damage insurance for personal injury, including death, as well as from property damage which may arise from the use of the Center or the operations of Contractor under this Agreement. Such insurance shall include public liability insurance in an amount of not less than \$2,000,000 combined single limit for bodily injury, including death, personal injury and property damage insurance. Policies or certificates evidencing such coverage shall be filed with City and shall include City as an additional insured. Such policies shall not be cancelled or materially changed without thirty (30) days' prior written notice to City by certified or registered mail.

12. WORKERS' COMPENSATION: Contractor shall obtain and maintain for at least the term of this Agreement workers' compensation insurance coverage in accordance with the provisions and requirements of the Labor Code of the State of California and any other applicable law. A certificate of insurance evidencing such coverage shall be filed with the City Clerk of City, which certificate shall provide that City will be given at least ten (10) days' notice prior to cancellation.

13. APPROPRIATIONS: City shall budget and pay Contractor the following appropriation amounts per quarter: Sixty-Nine Thousand Seven Hundred Eighty-Six Dollars and Ninety-One Cents (\$69,786.91) for operation; and Twenty-Four Thousand Eight Hundred Sixty Dollars and Fifty-Nine Cents (\$24,860.59) for maintenance. The maintenance expenditures shall be consistent with the terms set forth in Section 3(d) of this Agreement and shall be spent only for specified maintenance and repairs. City shall pay Contractor quarterly, within twenty (20) days of the commencement of each such quarter.

Upon the first extension of this Agreement, if exercised, the quarterly payments for operation will increase to Seventy-Two Thousand One Hundred Fifty-Five Dollars (\$72,155) and maintenance will increase to Twenty-Five Thousand Three Hundred Fifty-One Dollars and Seventy-Five Cents (\$25,351.75) for a total agreement amount of Three Hundred Ninety Thousand Twenty-Seven Dollars (\$390,027) for the term of July 1, 2023 through June 30, 2025. These amounts will carry forward to the second extension, if executed, of this Agreement with no additional increases, for the term of July 1, 2025 through June 30, 2027.

These appropriations reflect arms-length negotiations between the Parties. The Parties agree that the appropriations amounts are full and adequate for their stated and intended purposes and no further amount shall be due to Contractor at the end of the term.

In the event this Agreement is terminated before the end of a quarter, the appropriations for that incomplete quarter shall be prorated according to the date of termination.

14. RECORDS: Contractor shall maintain records of its operations and financial activities under this Agreement according to Housing and Community Development Act standards or generally accepted accounting practices, whichever is stricter, retaining those records for no less than three years. All records shall be open to inspection and audit during normal business hours by City, the Department of Housing and Urban Development, and the United States Comptroller General. Contractor shall submit an audit prepared by a certified public accountant to the City Manager by the twenty-eighth day of February of each year. City may request additional reports from Contractor, but no more often than quarterly.

15. INVENTORY: Unless waived by the City's Parks, Recreation and Community Services Director, Contractor hereby acknowledges that in addition to the building and fixtures therein, City has made available at the Center for use of Contractor certain furnishings, furniture and equipment. Within sixty (60) days after the commencement date of this Agreement, the Parties shall jointly take an inventory of all City-owned furnishings, furniture, and equipment with an estimated value of Five Hundred Dollars (\$500.00) or more, recording any damage observed. That inventory shall be initialed by the Parties, attached to this Agreement as part hereof. Contractor agrees to return all such furnishings, furniture and equipment upon the termination of this Agreement in as good a condition as when received, reasonable wear and tear excepted.

16. COMPLIANCE WITH FEDERAL REGULATIONS: Contractor by executing this Agreement certifies and agrees that it shall comply with the Federal funding regulations, policies, guidelines and requirements, including Title 24 Code of Federal Regulations Sections 570.601 and 570.602, require that no person in the United States shall on the ground of race, color, religion, sex, national origin, age or handicap, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity funded in whole or in part with Community Development funds.

17. NONDISCRIMINATION: Except as otherwise permitted by Section 12940 of the Government Code of the State of California, Contractor not to discriminate against any person, employee, or lessee on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, genetic information, gender, gender identity, gender expression, sex or sexual orientation in performing under this Agreement. Further, Contractor shall conform to the requirements of the Americans with Disabilities Act during the term of this Agreement.

18. POSSESSORY INTEREST: Contractor hereby recognizes and understands that this Agreement may create a possessory interest subject to property taxation and that Contractor may be subject to the payment of property taxes levied on such interest. If it is determined that this Agreement creates a possessory interest subject to property taxation, Contractor agrees to promptly pay all such taxes, assessments, and other governmental or district charges that may be levied on that interest. No such payment shall reduce any payment due the City hereunder.

19. TERMINATION: In the event either Party fails to comply with the terms of this Agreement and fails to remedy such default within twenty (20) days after receiving written notice of

such default, this Agreement may be terminated by the nondefaulting Party upon ten (10) days' written notice to the other.

Notwithstanding anything to the contrary herein, this Agreement may be terminated at any time by either Party upon a three (3) months' written notice to the other.

20. NOTICES: Notices, bills, invoices or reports under this Agreement shall be deemed served when personally served, or deposited in the United States mails, postage prepaid, to the address of the other Party. The current addresses of the Parties are as follow:

<u>City</u>	<u>Contractor</u>
City of Riverside Parks, Recreation and Community Services Director 6927 Magnolia Avenue Riverside, California 92504	Janet Goeske Foundation c/o Chairman 5257 Sierra Street Riverside, California 92504

21. ATTACHMENTS: All attachments are incorporated in this Agreement by reference.

22. AMENDMENT: This Agreement embodies the entire agreement between the Parties concerning the subject matter hereof, and no other agreement or understanding, verbal or otherwise, exists between the Parties at the time of execution. This Agreement may only be modified or amended in writing, authorized by the City Council, and signed by the Parties' appropriate representatives.

23. PARTIAL INVALIDITY: In the event that any part of this Agreement is declared invalid by the final and unappealable order, decree, or judgment of any court, this Agreement shall be construed as if that part had not been inserted.

24. ATTORNEYS' FEES: The prevailing Party in an action to enforce any right under this Agreement shall recover from the other Party reasonable attorneys' fees and costs of suit.

25. VENUE: Any action at law or in equity brought by either Party to enforce any right under this Agreement shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and the Parties waive all provisions of law providing for a change of venue to any other county.

26. EMERGENCY OPERATIONS CENTER: City may use the Center as an Emergency Operations Center in case of local disaster or emergency. City will staff the Center on such occasions.

IN WITNESS WHEREOF, the Parties hereto execute this Agreement on the day and year first above written.

CITY OF RIVERSIDE, a California
charter city and municipal corporation

JANET GOESKE FOUNDATION,
a nonprofit corporation

By: _____
City Manager

By: Megan G Demshki
Name: Megan Demshki
Its: Board of Directors, Chair

Attest _____
City Clerk

By: Vickie Hawley
Name: Vickie Hawley
Its: Board of Directors, Treasurer

APPROVED AS TO FORM:

Brandon S. Mercer
Brandon S. Mercer
Senior Deputy City Attorney

CERTIFIED AS TO FUNDS AVAILABILITY:
BY: [Signature]
Chief Financial Officer/City Treasurer

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EXHIBIT "A"

**SAMPLE - COMMUNITY DEVELOPMENT BLOCK GRANT
SUBRECIPIENT AGREEMENT
(Inserted behind this tab)**

**COMMUNITY DEVELOPMENT BLOCK GRANT
SUBRECIPIENT AGREEMENT**

JANET GOESKE FOUNDATION

(Comprehensive Senior Programming Services)

THIS AGREEMENT is made and entered into this ____ day of _____, 20____, by and between the CITY OF RIVERSIDE, a California charter city and municipal corporation ("City") and JANET GOESKE FOUNDATION, a California corporation ("Subrecipient").

RECITALS

WHEREAS, the Community Development Department, Development Division has applied and been awarded grant funds from the United States Department of Housing and Urban Development ("HUD") for the City of Riverside's ("City") fiscal year 2015-2016 Community Development Block Grant ("CDBG"), Catalog of Federal Domestic Assistance ("CFDA") No. 14.218, Program and will administer/monitor the distribution of said funds; and

WHEREAS, the Subrecipient has submitted its proposal to the Community Development Department, Development Division to receive funding from the City's fiscal year 2015-2016 Community Development Block Grant ("CDBG") Program, pursuant to the Housing and Community Development Act of 1974, as amended; and

WHEREAS, the Federal Accounting and Transparency Act of 2006 ("the Act") became effective on October 1, 2010 and requires all CDBG grant recipients to include specific provision in their grant agreements that are identified in paragraph 10.8 below; and

WHEREAS, Subrecipient agrees and understands that the Act requires additional reporting requirements, which includes providing information regarding the total compensation and names for the top five highest paid executives of its agency. Further, Subrecipient is referred to as the "Subcontractor" in Section 10.8 below; and

WHEREAS, following a public hearing, the City Council of the City has approved the allocation of Six Thousand Nine Hundred Fifty Dollars (\$6,950) from its 2015-2016 Community Development Block Grant to fund the proposal for supporting a portion of the costs associated with providing comprehensive senior services including an educational nutrition/fitness program, interpreter services and advisory services which was submitted by Subrecipient ("Grant funds").

NOW THEREFORE, in consideration of the mutual covenants set forth herein, and the mutual benefits to be derived there from, the City and Subrecipient agree as follows:

1. SCOPE OF SERVICES. Subrecipient shall provide services under the Comprehensive Senior Programming Services program, as more particularly described in

Exhibit "A", entitled Scope of Services ("Services"), and **Exhibit "B"** entitled Budget ("Budget") attached and incorporated by reference, in accordance with this Agreement.

2. **TERM.** The term of this Agreement shall be from July 1, 2015, to June 30, 2016.

3. **COMPENSATION/PAYMENT.** Subrecipient shall fully perform the Services to be provided under this Agreement for a total sum not to exceed Six Thousand Nine Hundred Fifty Dollar (\$6,950). Payment shall be made pursuant to the Budget and Section 9.6 of this Agreement. Invoices submitted by Subrecipient shall be delivered to City in accordance with Section 4.

4. **NOTICES.** Any notices, invoices or payments provided for, or required, to be given hereunder shall be in writing and shall be personally served or given by mail. Any notice given by mail shall be deemed given when deposited in the United States Mail, certified and postage prepaid, addressed to the party to be served as follows:

<u>City</u>	<u>Subrecipient</u>
City of Riverside Community & Economic Development Dept. Development Division Attn: Project Coordinator/Grants Div. 3900 Main Street, 3rd Floor Riverside, CA 92522	Janet Goeske Foundation Attn: Jessica Crawford 5257 Sierra Street Riverside, CA 92504

5. **AVAILABILITY OF FUNDS/AUTHORIZATION.** The City's allocation of funding to Subrecipient pursuant to this Agreement is contingent upon the availability to the City of CDBG funds and continued authorization for program activities by the United States Department of Housing and Urban Development ("HUD"), and is subject to amendment or termination due to lack of funds or authorization in accordance with Section 9.15. This Agreement is subject to written modification or termination as necessary by City in accordance with requirements of future CDBG amendments, regulations or City policy. In addition, this Agreement may be amended or terminated as provided in Sections 8.5 and 8.6 of this Agreement.

6. **EFFECTIVE DATE.** This Agreement, following its execution by City and Subrecipient, shall not become effective until such time as the Community Development Director or his/her designee submits to Subrecipient written notice that the Community Development Director has determined and verified to his/her reasonable satisfaction, in his/her sole discretion, that Subrecipient is an eligible Subrecipient ("Eligible Subrecipient") as defined in Title 24, Code of Federal Regulations section 570.204(c). Subrecipient represents and warrants that once recognized as an Eligible Subrecipient, it will take any and all necessary actions to remain an Eligible Subrecipient. Further, in this regard, in the event Subrecipient no longer qualifies as an Eligible Subrecipient, it shall forthwith notify City in writing of such lapse of qualification.

7. **COMPLIANCE.** By executing this Agreement, the Subrecipient hereby certifies that it will adhere to and comply with the same obligations to the City that the City has undertaken with HUD pursuant to its application and certifications for CDBG funds, including but not limited to the following, as they may be applicable to Subrecipient pursuant to the U.S. Housing and Community Development Act of 1974, as amended:

A. The Housing and Community Development Act of 1974, as amended, and legislative changes contained in the Housing and Urban-Rural Recovery Act of 1983, and the Housing and Community Development Act of 1987;

B. Regulations of the Department of Housing and Urban Development relating to CDBG (24 CFR 570, et seq.);

C. Regulations of the Department of Housing and Urban Development relating to environmental review procedures for the CDBG program, except that Subrecipient does not assume City's environmental responsibilities;

D. Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and implementing regulations issued at 24 CFR Part I; Title VIII of the Civil Rights Act of 1968 (P.L. 90-284) as amended; Section 109 of the Housing and Community Development Act of 1974, as amended, and the regulations issued pursuant thereto; Section 3 of the Housing and Urban Development Act of 1968, as amended; Executive Order 11246, as amended by Executive Orders 11375 and 12086, and implementing regulations at 41 CFR Chapter 60; Executive Order 11063, as amended by Executive Order 12259, and implementing regulations at 24 CFR Part 107;

E. Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112), as amended, and implementing regulations;

F. The Age Discrimination Act of 1975 (P.L. 94-135), as amended, and implementing regulations;

G. The relocation requirements of Title II and the acquisition requirements of Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the implementing regulations at 24 CFR Part 42;

H. The labor standard requirements as set forth in 24 CFR Part 570, Subpart K and HUD regulations issued to implement such requirements;

I. Executive Order 11988 relating to the evaluation of flood hazards and Executive Order 11288 relating to the prevention control and abatement of water pollution;

J. The flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234);

K. The regulations, policies, guidelines and requirements of 24 CFR Part 85 "Common Rule," OMB Circular Nos. A-87, A-21, A-110, A-122 and A-128 as they relate to the acceptance and use of federal funds under the federally-assisted program;

L. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 1821-4846), the Residential Lead-Based Paint Hazard Act of 1992 (42 U.S.C. § 4851-4956) and the regulations of 24 CFR Part 35; and safety regulations.

M. The Federal Accounting and transparency Act of 2006, P.L. 109-282, as amended by Section 6202(a) of P.L. 110-252.

To the extent, and as may from time to time be required by HUD, copies of the foregoing Policies and Regulations are attached hereto as **Exhibit "C"**.

8. GENERAL CONDITIONS.

8.1. Subrecipient As Independent Contractor. In the performance of this Agreement, Subrecipient, and Subrecipient's employees, subcontractors and agents, shall act in an independent capacity as independent contractors, and not as officers or employees of the City of Riverside. Subrecipient acknowledges and agrees that the City has no obligation to pay or withhold state or federal taxes or to provide workers' compensation or unemployment insurance to Subrecipient, or to Subrecipient's employees, subcontractors and agents. Subrecipient, as an independent contractor, shall be responsible for any and all taxes that apply to Subrecipient as an employer.

8.2. Indemnity. Except as to the sole negligence or willful misconduct of the City, Subrecipient shall defend, indemnify and hold the City, and its officers, employees and agents, harmless from any and all loss, damage, claim for damage, liability, expense or cost, including attorneys' fees, which arises out of or is in any way connected with the performance of work under this Agreement by Subrecipient or any of its employees, agents or subcontractors and from all claims by Subrecipient's employees, subcontractors and agents for compensation for services rendered to Subrecipient in the performance of this Agreement, notwithstanding that the City may have benefitted from their services. This indemnification provision shall apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of Subrecipient or of Subrecipient's employees, subcontractors or agents. Subrecipient understands and agrees that it shall defend the City from any claim even if it appears to be without merit.

Subrecipient shall also defend, indemnify and hold City harmless from any loss, damage or attorneys' fees incurred because of any claim by any person or entity, including HUD, that Subrecipient has failed to meet any CDBG requirements.

The parties also expressly agree that any payment, attorneys' fees, costs or expense that the City incurs or makes to or on behalf of an injured employee under the City's self-administered workers' compensation is included as a loss, expense or cost for the purposes of this Section, and that this Section shall survive the expiration or early termination of the Agreement.

8.3. Insurance.

A. General Provisions. Prior to the City's execution of this Agreement, Subrecipient shall provide satisfactory evidence of, and shall thereafter maintain during the term of this Agreement, such insurance policies and coverages in the types, limits, forms and ratings required herein. The rating and required insurance policies and coverages may be modified in writing by the City's Risk Manager or City Attorney, or a designee, unless such modification is prohibited by law.

B. Limitations. These minimum amounts of coverage shall not constitute any limitation or cap on Subrecipient's indemnification obligations under Section 8.2 hereof.

C. Ratings. Any insurance policy or coverage provided by Subrecipient or subcontractors as required by this Agreement shall be deemed inadequate and a material breach of this Agreement, unless such policy or coverage is issued by insurance companies authorized to transact insurance business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or higher.

D. Cancellation. The policies shall not be canceled unless thirty (30) days prior written notification of intended cancellation has been given to City by certified or registered mail, postage prepaid.

E. Adequacy. The City, its officers, employees and agents make no representation that the types or limits of insurance specified to be carried by Subrecipient pursuant to this Agreement are adequate to protect Subrecipient. If Subrecipient believes that any required insurance coverage is inadequate, Subrecipient will obtain such additional insurance coverage as Subrecipient deems adequate, at Subrecipient's sole expense.

F. Workers' Compensation Insurance: By executing this Agreement, Subrecipient represents that Subrecipient is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation, or to undertake self-insurance before commencing any of the work. Subrecipient shall carry the insurance or provide for self-insurance required by California law to protect said Subrecipient from claims under the Workers' Compensation Act. Prior to City's execution of this Agreement, Subrecipient shall file with City either (1) a certificate of insurance showing that such insurance is in effect, or that Subrecipient is self-insured for such coverage, or (2) a certified statement that Subrecipient has no employees, and acknowledging that if Subrecipient does employ any person, the necessary certificate of insurance will immediately be filed with City. Any certificate filed with City shall provide that City will be given at least ten (10) days prior written notice before modification or cancellation thereof.

G. Commercial General Liability. Prior to City's execution of this Agreement, Subrecipient shall obtain, and shall thereafter maintain during the term of this Agreement, commercial general liability insurance as required to insure Subrecipient against damages for personal injury, including accidental death, as well as from claims for property damage, which

may arise from or which may concern operations by anyone directly or indirectly employed by, connected with, or acting for or on behalf of Subrecipient. The City, and its officers, employees and agents, shall be named as additional insureds under the Subrecipient's insurance policies.

Subrecipient's commercial general liability insurance policy shall cover both bodily injury (including death) and property damage (including, but not limited to, premises operations liability, products completed operations liability, independent contractor's liability, personal injury liability, and contractual liability) in an amount not less than \$1,000,000 per occurrence and a general aggregate limit in the amount of not less than \$2,000,000.

Prior to City's execution of this Agreement, copies of insurance policies or original certificates and additional insured endorsements evidencing the coverage required by this Agreement, for both commercial general and automobile liability insurance, shall be filed with City and shall include the City and its officers, employees and agents, as additional insureds. Said policies shall be in the usual form of commercial general and automobile liability insurance policies, but shall include the following provisions:

It is agreed that the City of Riverside, and its officers, employees and agents, are added as additional insureds under this policy, solely for work done by and on behalf of the named insured for the City of Riverside.

H. Subcontractors' Insurance. Subrecipient shall require all of its subcontractors to carry insurance, in an amount sufficient to cover the risk of injury, damage or loss, that may be caused by the subcontractors' scope of work and activities provided in furtherance of this Agreement, including, but without limitation, the following coverages: Workers' Compensation, Commercial General Liability, Errors and Omissions, and Automobile liability. Upon City's request, Subrecipient shall provide City with satisfactory evidence that subcontractors have obtained insurance policies and coverages required by this section.

I. Commercial Automobile Insurance. Subrecipient is required to provide commercial automobile liability insurance for this Agreement with the exception being those Subrecipients that do not require the use of an automobile to meet program requirements as detailed in the Scope of Work.

All Subrecipients that do not require the use of an automobile to meet program requirements in the Scope of Work must complete **Exhibit "G"** Certification Regarding Automobile Usage and Receipt of CDBG Funding from City of Riverside attached hereto and incorporated herein by reference.

Subrecipients that require the use of an automobile or must drive to meet program requirements in the Scope of Work must submit insurance certificates acceptable to the City that meet the following requirement(s):

Subrecipient's automobile liability policy shall cover both bodily injury and property damage in an amount not less than \$1,000,000 per occurrence and an aggregate limit of not less than \$1,000,000. All of Subrecipient's automobile and/or commercial general liability insurance

policies shall cover all vehicles used in connection with Subrecipient's performance of this Agreement, which vehicles shall include, but are not limited to, Subrecipient owned vehicles, Subrecipient leased vehicles, Subrecipient's employee vehicles, non-Subrecipient owned vehicles and hired vehicles. The City, and its officers, employees and agents, shall be named as additional insureds under the Subrecipient's automobile insurance policy.

8.4. Recognition of City. Subrecipient shall ensure recognition of the City in providing funding for the Services provided by this Agreement. All activities, facilities, items and publications utilized or made possible pursuant to this Agreement shall indicate the funding source.

8.5. Amendment. In addition to the City's right to modify pursuant to Section 5 of the Agreement, this Agreement may only be modified by written agreement between City and Subrecipient.

8.6. Termination. In addition to the City's right to terminate pursuant to Section 5 of this Agreement, this Agreement may be terminated at any time by either party upon giving thirty (30) day notice in writing to the other party. Community Development Director or his/her designee is hereby empowered to give said notice, subject to ratification by the City Council. Further, the City may immediately terminate this Agreement upon the termination, suspension, discontinuation or substantial reduction in Grant funding for the Agreement activity. Further, and notwithstanding any other provision of this Agreement, if Subrecipient materially fails to comply with any term of this Agreement, or the award the subject of this Agreement, whether stated in a Federal statute or regulation, an assurance, in a State plan or obligation, a notice of award, or elsewhere, the awarding agency or City may take any one or more of the following actions, as appropriate in the circumstances:

A. Temporarily withhold cash payments pending correction of the deficiency by the Subrecipient or more severe enforcement action by the awarding agency;

B. 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;

C. Wholly or partly suspend or terminate the current award for the City's or Subrecipient's program;

D. Withhold further awards for the program; or

E. Take other remedies that may be legally available.

Further, and notwithstanding any other provision of this Agreement, the award may be terminated for convenience in accordance with 24 CFR Part 85.44.

8.7. Costs Following Termination. Costs of Subrecipient resulting from obligations incurred by the Subrecipient during a suspension or after termination of this Agreement are not allowable unless City expressly authorizes them in the Notice of Suspension or Termination or

subsequently. Other Subrecipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowed if (a) the costs resulted from obligations which were properly incurred by the Subrecipient before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable; and (b) 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.

8.8. Extensions. In the event the Grant funds are not fully expended on the termination date, this Agreement, and all of its terms and conditions, may be extended upon the written request of Subrecipient to the City, setting forth the reasons for such request and upon written consent of the City Manager or a designee, upon a determination that the extension is in the best interest of the City and Subrecipient in performing Services under this Agreement. This Agreement may be extended for one fiscal year in the sole discretion of the City, at which time this Agreement shall automatically terminate. Extensions shall be requested in writing from the Community Development Director at least sixty (60) days prior to the termination of the Agreement, unless the Community Development Director, in his/her sole discretion agrees in writing to shorten the time in which an extension may be requested.

9. ADMINISTRATIVE REQUIREMENTS.

9.1. Revenue Disclosure Requirement. Revenue Disclosure Requirement. Subrecipient certifies that it has previously filed with the City of Riverside, Community Development Department, Development Division, a written statement listing all revenue received, or expected to be received, by Subrecipient from Federal, State, City, County, and from other governmental agencies, and applied or expected to offset, in whole or in part, any of the costs incurred by Subrecipient in conducting current or prospective projects, programs, or business activities, including, but not limited to the project, program, or business activity which is the subject of this Agreement. Such statement shall reflect the name and a description of such project, program, or business activity, the dollar amount of funding provided, or to be provided, by each and every governmental agency to each such project, program, or business activity, and the full name and address of such governmental agency.

For those projects, programs, and business activities in which there are sources of funds from the private sector in addition to Grant funds, Subrecipient shall provide proof of such funding. City shall not pay for any services provided by Subrecipient which are funded by other sources. All restrictions and/or requirements provided in this Agreement relative to accounting, budgeting, and reporting, apply to the total project, program, or business activity regardless of funding sources.

9.2. Use of Grant Funds. Except as otherwise limited by this Agreement, Grant funds shall be used exclusively to implement the project, program, business activity, and carry-out the Services. Grant funds shall not be used as security or to guarantee payments for any non-program obligations, nor as loans for non-program activities. All bank accounts for Subrecipient shall be non-interest bearing and Subrecipient agrees that it shall not use Grant funds to pay for entertainment, meals, or gifts.

9.3. Annual Budget. The Subrecipient hereby certifies and agrees that the Grant funds received shall be used exclusively as described in the Annual Budget, attached hereto as **Exhibit "B"** and incorporated herein by reference. Subrecipient shall not make expenditures that deviate from the Budget without prior written approval of the Community Development Director or his/her Designee. City may approve Budget modifications to this Agreement for the movement of funds within the budget categories when such modifications: (i) do not exceed \$10,000 per budget cost category; (ii) are specifically requested by City; (iii) do not alter the amount of compensation subject to or under this Agreement; (iv) will not change the project, program, or business activity goals or scope of services; (v) are in the best interests of City and Subrecipient in performing the scope of services under this Agreement; and vi) are related to salaries, are in accordance with applicable salary ordinances or law.

9.4. Property and Equipment.

A. Non-Expendable Property or Equipment. Subrecipient shall maintain a record for each item of non-expendable property or equipment acquired for this project, program, or business activity with Grant funds. This record shall be provided to City as well as being available for inspection and audit upon reasonable notice by the City at the request of City. Non-expendable property or equipment means tangible personal property having a useful life of more than one (1) year and acquisition cost which equals or exceeds the lesser of: (i) the capitalization level established by the organization for the financial statement purposes; or (ii) Five Thousand Dollars (\$5,000) or more per unit.

B. Approval. Subrecipient shall not purchase or agree to purchase non-expendable property and/or equipment without the prior written approval from the Community Development Director or his/her Designee. Upon completion or early termination of this Agreement, City reserves the right to determine the final disposition of said non-expendable property acquired for this project, program, or business activity and Grant funds in compliance with applicable laws and regulations. Said disposition may include, but is not limited to, City taking possession of said non-expendable property and/or equipment.

C. Expendable Personal Property. Expendable personal property refers to all tangible personal property other than non-expendable personal property. Subrecipient shall not purchase or agree to purchase expendable personal property with a unit value of Five Thousand Dollars (\$5,000) or more per unit without the prior written approval of the Community Development Director or his/her Designee.

D. Purchase or Lease of Non-Expendable Property or Equipment. Subrecipient shall obtain three documented bids prior to purchasing or leasing any non-expendable personal property or equipment over Five Thousand Dollars (\$5,000) in unit value as approved in the Budget. Subrecipient shall purchase or lease from the lowest responsive bidder. All equipment that has a purchase or lease price of over Five Thousand Dollars (\$5,000) in unit value and life expectancy of more than one (1) year shall be properly identified and inventoried and shall be charged at its actual price, deducting all cash discounts, rebates and allowances received by Subrecipient. This inventory shall be provided to City as well as being available for inspection and audit upon reasonable notice by the City at the request of City.

E. **Acquisition of Supplies and Equipment.** Following approval by City for necessary supplies and equipment for Agreement performance, Subrecipient may purchase from a related agency/organization only if: (i) prior authorization is obtained in writing from City; (ii) no more than charges for reimbursement costs are made and no less than minimum specifications are met as provided in writing by City; (iii) a community related benefit is derived from such Subrecipient or its employees, agents or officers.

F. **Purchase and Invoice Deadlines.** Purchase of equipment and property, other than supplies, shall be completed before the first day of the last three (3) months of the Agreement period and all equipment bills are to be paid before the first day of the last two (2) months of this period. No property or equipment, other than supplies, may be purchased during the final three (3) months of the Agreement. Subrecipient shall complete all purchases of supplies before the last two (2) months of the Agreement and shall pay all supply bills before the final month of the Agreement. Invoices, which have not been received by the Community Development Department, Development Division within thirty (30) days after the Agreement termination date, shall not be honored. Exceptions to these limitations require prior written approval by the City and Community Development Department, Development Division.

9.5. **Changes in Grant Allocation.** City reserves the right to reduce the grant allocation when City's fiscal monitoring indicates that Subrecipient's rate of expenditure will result in unspent funds at the end of the program year. Changes in the grant allocation will be done after consultation with Subrecipient. Such changes shall be incorporated into this Agreement by written amendments.

9.6. **Costs and Method of Payment.**

A. **Invoicing.** The City shall pay to the Subrecipient the Grant amount specified in Section 3 of this Agreement above on a reimbursable basis for all approved costs. The Subrecipient shall submit not more often than monthly to the authorized representatives of the City, a certified statement setting forth in detail the expenditures made for which it is asking reimbursement along with supporting documentation which specifically states how funds were expended. At City's discretion and in accordance with HUD regulations, said documentation may include, but will not be limited to, cancelled checks, invoices, receipts, payroll logs and employee time sheets.

B. **Reimbursement.** The City shall promptly review the monthly expenditure statement and supporting documentation and reimburse the Subrecipient for approved costs in accordance with its usual accounting procedures, but in no event later than thirty (30) days. The City may require additional information from Subrecipient as may be necessary and appropriate for the City to make its determination as to allowable costs.

9.7. **Program Income.** The term "program income" means any gross income received by the Subrecipient that is directly generated from the use of Grant funds (24 CFR § 570.500(a)). Program income includes, but is not limited to, the following: (i) proceeds from the disposition by sale or long-term lease of rental property purchased or improved with Grant funds; (ii)

proceeds from the disposition of equipment purchased with Grant funds; (iii) gross income from the use or rental of real or personal property acquired with Grant funds, less the costs incidental to the generation of the income, pending the disposition or use for which the property was acquired; (iv) gross income from the use or rental of real property owned by Subrecipient that was constructed or improved with Grant funds, less the costs incidental to the generation of the income; (v) payments received of principal and interest on loans made with Grant funds; (vi) interest earned on Grant funds held in a revolving fund account; and (vii) interest earned on program income, pending the disposition of such program income.

As defined in 24 CFR § 570.500(a)(4)(i), program income does not include any income received in a single program year by City and Subrecipient if the total amount of such income does not exceed Twenty-five Thousand Dollars (\$25,000). When such income is generated by an activity that is only partially assisted with Grant funds, the program income shall be pro-rated to reflect the percentage of Grant funds actually used by Subrecipient. Subrecipient shall account for program income in accordance with the standards included in 24 CFR Part 84.24 and 24 CFR Part 500.

9.8. Recording of Program Income. Program income shall only be allowed under this Agreement, if previously approved by the City and evidenced in the Budget. If the Budget includes any of the aforementioned categories (Section 9.7) of program income or other categories defined in 24 CFR § 570.503(a), (b)(3) and (8), and § 570.504, Subrecipient shall record the receipt and expenditure of program income, as defined above and in 24 CFR § 84 and 24 CFR § 570.500(a), as part of the permanent records of the financial transactions of the grant program.

9.9. Retention of Program Income. Program income received by Subrecipient, as approved in the Budget, may be retained by Subrecipient only if such income is treated as additional Grant funds to be used to continue providing Services. Furthermore, all other provisions of this Agreement shall apply to any services provided with program income. Program income must be used before drawing down additional grant funds from the City, except in the case of a revolving fund. In the case of program income in a revolving fund, the Subrecipient must use the program income for the activity for which the revolving fund was established, before drawing down additional Grant funds for the activity.

9.10. Reversion of Assets. Subrecipient hereby agrees to return all program income, as defined by 24 CFR § 570.500, which is on hand upon expiration of this Agreement, or which is received after the Agreement's expiration, to the City as required by § 570.503(b)(8) of said Title. Upon expiration of the Agreement, real property under Subrecipient's control acquired or improved in whole or in part with Grant funds (including Grant funds provided to the Subrecipient in the form of a loan) in excess of Twenty-five Thousand Dollars (\$25,000) shall be either: (i) used to meet one of the national objectives in 24 CFR § 570.208 until five years after expiration of the Agreement, or for such longer period of time as determined to be appropriate by the City; or (ii) not used in accordance with 24 CFR § 570.208(b)(8)(i), in which event the Subrecipient shall pay to the City an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-Grant funds for the acquisition

of, or improvement to, the property. The payment is program income to the City. No payment is required after the period of time specified above.

9.11. Use of Real Property. Subrecipient hereby agrees to comply with 24 CFR § 570.505 governing the use of real property. For the purposes of this Agreement "real property" means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment. Said standards apply to real property within Subrecipient's control which was acquired or improved in whole or in part using Grant funds in excess of Twenty-five Thousand Dollars (\$25,000). These standards shall apply from the date Grant funds are first spent for the property until five years after the expiration of the Agreement under which the CDBG assistance was last provided to the Subrecipient for the property.

9.12. NEPA Compliance. Subrecipient agrees that when Grant funds in excess of Twenty-five Thousand Dollars (\$25,000) are used by Subrecipient to acquire real property or construct or add fixtures to a public facility Subrecipient will comply with the National Environment Policy Act of 1969, the California Environment Quality Act, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; California Government Code § 7260, et seq.

9.13. Change in Use. Subrecipient may not change the use or planned use of the property, including the beneficiaries of such use, from that for which the acquisition or improvement was made unless the City provides affected citizens with reasonable notice of, and opportunity to comment on, any proposed change. After the public comment period has taken place, the change of use must be approved in writing by City. The new use of the property must meet one of the three broad national objectives of the CDBG Program: (i) principally benefit low and moderate income individuals and families; (ii) aid in the elimination and prevention of slums and blight; or (iii) address other community health and safety needs having a particular urgency. Additionally, the property shall not serve as a building for the general conduct of government in its projected new use.

9.14. Disposition of Real Property. Real property may be disposed of in the following manner, only after City has provided affected citizens with reasonable notice, and after receiving prior written approval from City that the property is no longer needed for a use which meets one of the aforementioned three national objectives of the CDBG Program:

A. Title to the real property shall vest in Subrecipient subject to the condition that the Subrecipient shall use the real property for the authorized purpose of the project, program, or business activity as long as it is needed, and shall not encumber the property without approval of the City;

B. While held by Subrecipient, the real property or the facility constructed or receiving the added fixtures is to be used exclusively for the purposes for which acquisition, construction or improvement was originally approved;

C. Written approval from the City must be secured if the property or facility is to be put to an alternative use that is consistent with federal regulations governing Grant funds;

D. Should the real property or the improved or constructed facility be used, during the term set forth in paragraphs 23(a)(i) and 24 of this Agreement, for a purpose not consistent with applicable federal regulations governing Grant funds or should Subrecipient desire to sell the real property or facility, then:

- (i) If Subrecipient retains title, it will have to reimburse either City Government an amount that represents the percentage of current fair market value that is identical to the percentage that Grant funds comprised moneys paid to initially acquire the property or construct or add fixtures to the facility; or
- (ii) If Subrecipient sells the property or facility or is required to sell or otherwise convey the property or facility, Subrecipient is to reimburse either the City an amount that represents the percentage of proceeds realized by the sale that is identical to the percentage that Grant funds comprised moneys paid to initially acquire the property or construct or improve the facility. This percentage amount will be calculated after deducting all actual and reasonable cost of sale from the sale proceeds.

E. If the change of use occurs after closeout, the provisions governing income from the disposition of the real property in 24 CFR § 570.504(b)(4) or (5), as applicable, shall apply to the use of funds reimbursed.

F. Following the reimbursement the CDBG Program in accordance with 24 CFR § 570.505(b), the property no longer will be subject to any CDBG requirements.

9.15. Fiscal Limitations. The United States of America through HUD may in the future place programmatic or fiscal limitation(s) on Grant funds not presently anticipated. Accordingly, City reserves the right to revise this Agreement in order to take account of actions affecting HUD program funding. In the event of funding reduction, City may reduce the budget of this Agreement as a whole or as to cost category, and may, at its sole discretion, limit Subrecipient's authority to commit and spend funds, and may restrict Subrecipient's use of both its uncommitted and its unspent funds. Where HUD has directed or requested City to implement a reduction in funding, with respect to funding for this Agreement, the Community Development Director or his/her designee may act for City in implementing and effecting such a reduction and in revising the Agreement for such purpose. Community Development Director or his/her designee may act for City in suspending the operation of this Agreement for up to sixty (60) days, upon three (3) days written notice to Subrecipient of his/her intention to so act. In no event, however, shall any revision made by City affect expenditures and legally binding commitments made by Subrecipient before it received notice of such revision, provided that such amounts have been committed in good faith and are otherwise allowable and that such commitments are consistent with HUD cash withdrawal guidelines.

9.16. Program Records. The Subrecipient shall maintain financial, programmatic, statistical and other supporting records of its operations and financial activities in accordance

with the requirements of the Housing and Community Development Act and its regulations and specifically shall prepare and maintain the following records and reports to assist the City in maintaining its record keeping requirements:

A. Records:

- (i) Documentation of the income level as defined by the HUD Guidelines set forth on the Compliance Report (copy of report form attached hereto as **Exhibit "C"** of persons and/or families participating in or benefiting by the Subrecipient's project, program, or business activity).
- (ii) Documentation of the number of persons and/or families participating in or benefiting by the Subrecipient's project, program, or business activity.
- (iii) Documentation of all Grant funds received from the City or other funds to operate the project, program, or business activity herein by Subrecipient.
- (iv) Documentation of expenses as identified in the Subrecipient's Annual Program Budget.
- (v) Any other related records as City shall require from time to time.

B. Reports:

- (i) Payment Request form.
- (ii) Quarterly reports to the City of Riverside as shown on the attached Quarterly Compliance Report commencing July 1, of the Program Year and ending June 30, of the Program Year (a copy of the report form and schedule of deadlines are attached hereto as **Exhibit "C"**).
- (iii) Any such other reports, as City shall reasonably require. Failure to provide such reports may result in the Subrecipient jeopardizing said Grant funds as provided herein.

9.17. Performance Monitoring. The City will monitor the performance of the Subrecipient against goals and performance standards required herein. Substandard performance as determined by the City will constitute non-compliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the City, contract suspension or termination procedures will be initiated.

9.18. Accounting Standards. The Subrecipient shall administer its project, program, or business activity in conformance with OMB Circular 1-110 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain source documentation for all costs incurred.

9.19. **Cost Principles.** The Subrecipient shall administer its project, program, or business activity in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit Organizations," or A-21, "Cost Principles for Educational Institutions," as applicable.

9.20. **Audits.**

A. **Records.** The Subrecipient's records shall be open to inspection and audit by the authorized representatives of the City, the Department of U.S. Housing and Urban Development and the Comptroller General during regular working hours. Said records shall be retained for such time as may be required by the regulations of the Housing and Community Development Act, but in no case for less than five (5) years after completion of an audit. Records which relate to (a) complaints, claims, administrative proceedings or litigation arising out of the performance of this Agreement, or (b) costs and expenses of this Agreement to which City or any other governmental agency takes exception, shall be retained beyond the five (5) years until resolution or disposition of such appeals, litigation claims or exceptions.

B. **External Audits.** If required by the U.S. Department of Housing and Urban Development, Subrecipient shall obtain an external audit in accordance with the single audit regulations (24 CFR Part 44.6). The audit report shall be submitted to the City within 180 days after the termination of this Agreement. Subrecipients which receive less than \$300,000 in total federal financial assistance annually, shall be monitored through site visits, limited scope audits, or other means in accordance with 31 U.S.C. 7502(f)(2)(B). The cost of any independent audits or attestation engagements, other than limited scope audits shall not be charged to the Federal awards in accordance with OMB Circular A-133 Compliance Supplement (for governmental entities and non-profit subrecipients) and 31 U.S.C. 7505(b)(1)(A)(ii). Subrecipients which receive \$300,000 or more in total federal financial assistance in a year are required to obtain an independent audit in accordance with OMB Circular A-133 Compliance Supplement (for governmental entities and non-profit subrecipients) and 31 U.S.C. 7502(a)(1)(A).

9.21. **Personnel.** Consultant shall furnish all personnel necessary to perform the Services and shall be responsible for their performance and compensation. Consultant recognizes that the qualifications and experience of the personnel to be used are vital to professional and timely completion of the Services. The key personnel listed in **Exhibit "D"** attached hereto and incorporated herein by this reference and assigned to perform portions of the Services shall remain assigned through completion of the Services, unless otherwise mutually agreed by the parties in writing, or caused by hardship or resignation in which case substitutes shall be subject to Agency approval.

10. **MISCELLANEOUS PROVISIONS.**

10.1. **Nondiscrimination.** Subrecipient shall maintain and operate all facilities and deliver services to the community and program participants in a manner, which is non-discriminatory.

10.2. National Origin and Race. Subrecipient shall abide by § 570.601 and § 570.912 of the Code of Federal Regulations at Title 24 which requires that no person in the United States shall on the ground of religion, race, color, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with Community Block Grant Development funds.

10.3. Sexual Orientation and AIDS. Subrecipient further agrees not to discriminate on the grounds of sexual orientation or disability, including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto.

10.4. Disabilities. Pursuant to the Americans with Disabilities Act and specifically, 42 USC § 12132, Subrecipient acknowledges and agrees that in the performance of the Grant, no qualified individual shall, by reason of a disability, be excluded from participation in or be denied the benefits of the services, programs or activities of the City or Subrecipient or be subjected to discrimination by the City or Subrecipient.

10.5. Conflict of Interest. Subrecipient and its assigns, employees, agents, consultants, officers and elected and appointed officials shall become familiar with and shall comply with the CDBG regulations prohibiting conflicts of interest contained in 24 CFR § 570.611. Subrecipient understands and agrees that no waiver or exception can be granted to the prohibition against conflict of interest except upon written approval of HUD pursuant to 24 CFR § 570.611(d). Any request by Subrecipient for an exception shall first be reviewed by City to determine whether such request is appropriate for submission to HUD. In determining whether such request is appropriate for submission to HUD, City will consider the factors listed in 24 CFR § 570.611(e).

Prior to any funding under this Agreement, Subrecipient shall provide City with a list of all employees and their job titles, agents, consultants, officers and elected and appointed officials who are in a position to participate in a decision-making process, exercise any functions or responsibilities, or gain inside information with respect to the CDBG activities funded under this Agreement. Subrecipient shall also promptly disclose to City any potential conflict, including even the appearance of conflict that may arise with respect to the CDBG activities funded under this Agreement. Any violation of this section shall be deemed a material breach of this Agreement, and the City shall immediately terminate the Agreement.

10.6. Religious Proselytizing or Political Activities. Subrecipient agrees that it will abide by the requirements set forth in 24 CFR 570.200 subsection (j); and as such Subrecipient agrees that, in connection with such public services:

- (i) It will not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services. If such activities are conducted, 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; and

- (ii) It shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief; and
- (iii) It may not use CDBG funds 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. 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. 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.

10.7. Lobbying. The Subrecipient certifies to the best of its knowledge and belief, that:

A. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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.

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

C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into.

10.8. Reporting Executive Compensation And First-Tier Subcontract Awards.

- (a) Definitions. As used in this clause:

“Executive” means officers, managing partners, or any other employees in management positions.

“First-tier subcontract” means a subcontract awarded directly by a Contractor to furnish supplies or services (including construction) for performance of a prime contract, but excludes supplier agreements with vendors, such as long-term arrangements for materials or supplies that would normally be applied to a Contractor's general and administrative expenses or indirect cost.

“Total compensation” means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

(1) Salary and bonus.

(2) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

(3) Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

(4) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

(5) Above-market earnings on deferred compensation which is not tax-qualified.

(6) Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

(b) Section 2(d)(2) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110-252), requires the Contractor to report information on subcontract awards. The law requires all reported information be made public, therefore, the Contractor is responsible for notifying its subcontractors that the required information will be made public.

(c)(1) Unless otherwise directed by the contracting officer, by the end of the month following the month of award of a first-tier subcontract with a value of \$25,000 or more, (and any modifications

to these subcontracts that change previously reported data), the Contractor shall report the following information at <http://www.fsrs.gov> for each first-tier subcontract. (The Contractor shall

follow the instructions at <http://www.fsrs.gov> to report the data.)

(i) Unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.

(ii) Name of the subcontractor.

(iii) Amount of the subcontract award.

(iv) Date of the subcontract award.

(v) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.

(vi) Subcontract number (the subcontract number assigned by the Contractor).

(vii) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district.

(viii) Subcontractor's primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district.

(ix) The prime contract number, and order number if applicable.

(x) Awarding agency name and code.

(xi) Funding agency name and code.

(xii) Government contracting office code.

(xiii) Treasury account symbol (TAS) as reported in FPDS.

(xiv) The applicable North American Industry Classification System code (NAICS).

(2) By the end of the month following the month of a contract award, and annually thereafter, the Contractor shall report the names and total compensation of each of the five most highly compensated executives for the Contractor's preceding completed fiscal year at <http://www.ccr.gov>, if:

(i) In the Contractor's preceding fiscal year, the Contractor received:

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

(3) Unless otherwise directed by the contracting officer, by the end of the month following the month of a first-tier subcontract with a value of \$25,000 or more, and annually thereafter, the Contractor shall report the names and total compensation of each of the five most highly compensated executives for each first-tier subcontractor for the subcontractor's preceding completed fiscal year at <http://www.fsrs.gov>, if:

(i) In the subcontractor's preceding fiscal year, the subcontractor received:

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

(d)(1) If the Contractor in the previous tax year had gross income, from all sources, under \$300,000, the Contractor is exempt from the requirement to report subcontractor awards.

(2) If a subcontractor in the previous tax year had gross income from all sources under \$300,000, the Contractor does not need to report awards to that subcontractor.

(e) Phase-in of reporting of subcontracts of \$25,000 or more.

(1) Until September 30, 2010, any newly awarded subcontract must be reported if the prime contract award amount was \$20,000,000 or more.

(2) From October 1, 2010, until February 28, 2011, any newly awarded subcontract must be reported if the prime contract award amount was \$550,000 or more.

(3) Starting March 1, 2011, any newly awarded subcontract must be reported if the prime contract award amount was \$25,000 or more.

10.9 **Registration.** Subrecipient agrees to maintain a current registration in the federal central contractor registration ("CCR") database (<http://www.ccr.gov>) pursuant to the Federal Funding Accountability and Transparency Act, P.L. 109-282, as amended by Section 6202(a) of P.L. 110-252. If Subrecipient is not currently registered, it must do so within ten (10) days of the date Subrecipient executes this MOU. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://DNB.com>) is required for registration in the CCR. Subrecipient shall also complete and sign the attached **Exhibit "F"** in conjunction with its execution of this Agreement and provide any supporting documentation if required.

11. **Exhibits.** The following exhibits attached hereto are incorporated herein to this Agreement by this reference:

- Exhibit "A" - Scope of Services
- Exhibit "B" - Budget
- Exhibit "C" - Policies and Regulations
- Exhibit "D" - Key Personnel
- Exhibit "E" - Authorized Signatures
- Exhibit "F" - Federal Funding Accountability and Transparency Act (FFATA)
- Exhibit "G" - Certification Regarding Automobile Usage (If applicable)

(Signatures on following page)

IN WITNESS WHEREOF, City and Subrecipient have caused this Agreement to be duly executed the day and year first above written.

CITY OF RIVERSIDE, a California
Charter city and municipal corporation

JANET GOESKE FOUNDATION
a California corporation

By: _____
Community & Economic
Development Deputy Director

By: _____
Judith Vails, Executive Director

Dated: _____

Dated: _____

Attest: _____
City Clerk

Dated: _____

APPROVED AS TO FORM:

By: _____
Deputy City Attorney

EXHIBIT "A"

SCOPE OF SERVICES

EXHIBIT "B"

BUDGET

EXHIBIT "C"

POLICIES AND REGULATIONS

EXHIBIT "D"

KEY PERSONNEL

EXHIBIT "E"

AUTHORIZED SIGNATURES

EXHIBIT "F"

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA)

The Federal Funding Accountability and Transparency Act (FFATA or "Transparency Act") was signed on September 26, 2006. The FFATA legislation requires information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website, which is www.USASpending.gov.

The FFATA Subaward Reporting System (FSRS) is the reporting tool Federal prime awardees (i.e. prime contractors and prime grants recipients) use to capture and report subaward and executive compensation data regarding their first-tier subawards to meet the FFATA reporting requirements. Prime contract awardees will report against sub-contracts awarded and prime grant awardees will report against sub-grants awarded. The sub-award information entered in FSRS will then be displayed on www.USASpending.gov associated with the prime award furthering Federal spending transparency.

The Transparency Act requires information disclosure concerning entities receiving Federal financial assistance through Federal awards such as Federal contracts, sub-contracts, grants, and sub-grants.

Specifically, the Transparency Act's section 2(b)(1) requires the City to provide the following information about each sub-award(s) greater than \$25,000:

- Name of the entity receiving the award;
- Amount of the award;
- NAICS code for contracts / CFDA program number for grants;
- Information on the award including purpose of the funding action;
- Location of the entity receiving the award and primary location of performance under the award;
- Unique identifier (DUNS #) of the entity receiving the award and the parent entity of the recipient;
- Names and total compensation of the five most highly compensated officers of the entity if the entity:

In the preceding fiscal year, received 80 percent or more of its annual gross revenues in Federal awards; and \$25,000,000 or more in annual gross revenues from Federal awards; and the public does not have access to this information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

I, _____ (print name), hereby agree that:

I read and understand the information provided above.

I acknowledge and agree that:
(Please check one of the following)

_____ (agency name) does not meet the above threshold requiring names and total compensation of the five most highly compensated officers of the entity if the entity.

_____ (agency name) does meet the above threshold* requiring names and total compensation of the five most highly compensated officers of the entity if the entity.

*If agency meets the above threshold, the agency MUST complete the section below identifying the names and total compensation of the five most highly compensated officers of the entity, signed and dated by the one of the following: President; Executive Director; CEO; Board Chairperson; Finance Director; CFO; or Treasurer.

	Names of Executive	Total Compensation
1.		
2.		
3.		
4.		
5.		

Signature of President/Executive Director/Board Chair

Printed Name of President/Executive Director/Board Chair

EXHIBIT "G"

CERTIFICATION REGARDING AUTOMOBILE USAGE AND RECEIPT OF CDBG FUNDING FROM CITY OF RIVERSIDE

I, [Name of authorized individual] on behalf of [Name of Corporation, Partnership, LLC], hereby certify and acknowledge the following:

1. [Name of Corporation, Partnership, LLC] is a selected recipient of FY [Enter Year] CDBG Funding from the City of Riverside and acknowledges that it has been informed by City Staff that commercial automobile liability insurance for CDBG Grant recipient is required unless Subrecipient does not require the use of an automobile or the need to drive in order to meet program requirements detailed in the Scope of Work.

2. By signing this Certification, I am stating that the activity being funded will not require the use of an automobile/driving in support of said activity.

3. In the event that said activity will require the use of an automobile/driving in support of said activity, I agree, on behalf of [Name of Corporation, Partnership, LLC], to immediately obtain the required commercial automobile liability insurance and provide the required documentation and additional insured endorsements to the Contract Administrator.

Subrecipient acknowledges that Subrecipient's automobile liability policy shall cover both bodily injury and property damage in an amount not less than \$1,000,000 per occurrence and an aggregate limit of not less than \$1,000,000. All of Subrecipient's automobile and/or commercial general liability insurance policies shall cover all vehicles used in connection with Subrecipient's performance of this Agreement, which vehicles shall include, but are not limited to, Subrecipient owned vehicles, Subrecipient leased vehicles, Subrecipient's employee vehicles, non-Subrecipient owned vehicles and hired vehicles. The City, and its officers, employees and agents, shall be named as additional insureds under the Subrecipient's automobile insurance policy.

I declare under penalty of perjury that the foregoing is true and correct.

Name:

Title:

Date:

Rev: 7/3/12

EXHIBIT "B"
FACILITIES MAINTENANCE PLAN AND RESPONSIBILITY
(Inserted behind this tab)

Facility Maintenance Plan & Responsibility- Janet Goeske Senior Center

Planning Area	Task/Objective	Timescale	Action Required	Responsible Party	Notes
Electrical	Lamp Replacement	As needed	1. Change lamps for all interior light fixtures throughout center, except as noted in the following item.	Center	
	Lamp Replacement	As needed	1. Change lamps for all exterior light fixtures and for all interior light fixtures mounted above 12 feet. (e.g. parking lots, security, patio area, exercise room etc.).	PRCSD	
	Ballast Replacement	As needed	1. Replace ballast.	PRCSD	
	Annual Inspection and Preventative Maintenance	Annually	1. Perform an annual safety inspection for all interior and exterior electrical fixtures and equipment. 2. Renovate when and as required for code compliance and safety.	PRCSD	Pr in Tc of
A/C and Heating	Filter Replacement	Monthly	1. Replace Filters.		
	Annual Inspection and Preventative Maintenance	Annually	1. Perform annual A/C and heating inspection, including bathroom fans and provide any repairs/replacements of equipment as necessary.	PRCSD	Tc of
Plumbing	Annual Inspection and Preventative Maintenance	Annually	1. Clean out and flush all roof drains prior to rainy season. 2. Inspect interior floor drains in kitchen and bathroom areas.	PRCSD Center	PR bu de
	Sewage Preventative Maintenance/Backup	Bi-Monthly Service and as Needed	1. Bi-monthly line clearance service for all sewer laterals, as needed.	Center	Ce bi mc le
	Major Plumbing	As Needed	1. Broken fixtures; replacement of sensors; sewer/waste line major repair.	PRCSD	PR da va
Landscape	Irrigation Mains Irrigation Backflow	As Needed	1. Repair and replace irrigation main lines (i.e., constant pressure lines). 2. Repair and replace backflow.	PRCSD	

Facility Maintenance Plan & Responsibility - Janet Goeske Senior Center

Planning Area	Task/Objective	Timescale	Action Required	Responsible Party	N
Landscape Cont.	Maintenance	Weekly	1. Perform weekly landscape care. 2. Repair and replace broken sprinkler heads and any PVC lateral lines serving sprinkler heads. 3. Repair or replace irrigation valves. 4. Evaluate trees and perform trimming services.	Center Center PRCSD PRCSD	
Structural	ADA Compliance	As needed	1. Inspect and maintain facility (interior and exterior) in full compliance with ADA requirements, with update/rehab as needed when requirements change.	PRCSD	
	Fire Code Inspection	As required by code	1. Maintain facility (interior and exterior) for compliance with all applicable Fire Codes.	PRCSD	
	Annual Inspection Preventative Maintenance	Annually	1. Perform annual safety inspection.	PRCSD with Center Management	P t o
Building-Internal	Maintenance	Daily and as needed	1. Perform daily janitorial services to maintain a clean and safe facility. 2. Interior painting and touch-up painting. 3. Maintain equipment such as icemaker, appliances, etc.	Center-All	
Photovoltaic	Maintenance	Annually	1. Perform annual pressure washing/cleaning of photovoltaic panels (parking lot.) 2. Inspection at time of cleaning to identify any broken or replacement panels needed. 3. Repair and replace any broken photovoltaic panels as needed. 4. Maintain a clean housing unit room.	PRCSD PRCSD PRCSD Center	
Custodial & Waste Management	Janitorial & Trash Removal	Daily and as needed		Center	

CALL 311 to communicate needs; follow up with an email to Kyle Raphael Parks Superintendent (1