AGREEMENT BETWEEN
COUNTY OF SAN MATEO
DEPARTMENT OF HOUSING
AND
CITY OF MENLO PARK
TO ASSIST WITH
REPLACEMENT OF THE FLOORING AT THE
BELLE HAVEN CHILD DEVELOPMENT CENTER
FOR THE PERIOD
July 1, 2017 TO JULY 31, 2018

Contact Person: Rosa Mendoza
Email: rmendoza@smchousing.org
Phone: (650) 802-5037
AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND
THE CITY OF MENLO PARK

THIS AGREEMENT, entered into this 1st day of July, 2017, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and the CITY OF MENLO PARK hereinafter called "Borrower";

WITNESSETH:

WHEREAS, Borrower has applied for funding assistance for rehabilitation/physical improvements; and

WHEREAS, the County defines a Borrower as a legal entity with whom the County has executed a legally binding agreement, notwithstanding that the U.S. Department of Housing and Urban Development (HUD) which is providing funding assistance in this agreements, makes a distinction between subrecipient, Borrower, and developer. As such, HUD imposes different requirements for each type of contractual relationship; and

WHEREAS, HUD defines a subrecipient as generally a nonprofit or public entity that is specifically designated by the local government to receive pass-through funds to undertake certain activities that meet HUD guidelines. These pass-through funds are from the federal Community Development Block Grant (CDBG), HOME Investment Partnerships (HOME), and/or the Emergency Solutions Grant (ESG) Programs. A subrecipient may also receive pass-through funds for improvement of its own program facilities. A contractor is an entity selected through a procurement process to provide goods and services at a specified price and is paid compensation for the satisfactory provision of its good and services. A developer is an entity that assumes the risk in assembling a capital project and must have site control; a developer receives a developer fee for successfully undertaking the project; and

WHEREAS, in this agreement, Borrower is receiving HUD funds as a subrecipient selected through the County procurement process; and

WHEREAS, on May 16, 2016, the County Board of Supervisors approved the CDBG/HOME Action Plan for FY 2016-2017, which included funding for this activity; and

WHEREAS, it is necessary and desirable that Borrower receive funding assistance for the floor replacement project at the Belle Haven Child Development Center located at 401 Ivy Drive, Menlo Park, CA.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:
1. **Exhibits and Attachments**
The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

   - Exhibit A – Project Description
   - Exhibit B – Disbursement and Rates
   - Exhibit C – § 504 Compliance
   - Exhibit D – Borrower Declaration Form
   - Exhibit E – CDBG Agreement with Borrower Requirements

2. **Services to be performed by Borrower**
In consideration for the funding assistance set forth herein and in Exhibit “B,” Borrower shall perform the services (hereinafter referred to as the “services” or the “work”) necessary to implement the Project as described in Exhibit A.

3. **Disbursements**
Subject to Borrower’s satisfactory performance of the terms and conditions set forth herein, including but not limited to Exhibit A, County shall disburse to Borrower in accordance with the rates and in the manner specified in Exhibit B. County reserves the right to withhold disbursements if County determines that Borrower’s performance of applicable terms and conditions is unacceptable or documentation evidencing performance is unacceptable; provided County shall provide Borrower with 45 days’ notice and opportunity to cure. In no event shall County’s total fiscal obligation under this Agreement exceed **Forty Thousand dollars (40,000)**.

4. **Term and Termination**
Subject to compliance with all terms and conditions, the term of this Agreement shall be from July 1, 2017 to July 31, 2018 unless otherwise modified in Exhibit A.

County may terminate this Agreement for cause after giving Borrower written notice of any breach or default under this Agreement and after the expiration of 30 days from the date of such notice to cure said breach or default, if Borrower fails to cure said breach or default to the satisfaction of County, in County’s sole discretion; provided, however, if the breach or default is curable but not of the nature which can be readily cured within 30 days, and Borrower has commenced to cure such breach or default within the 30 day period and is diligently pursuing such cure to completion, Borrower shall have such additional period of time as is reasonably necessary to cure the breach or default. If a default shall occur and be continuing (i.e. Borrower shall fail to cure or to commence to cure), County may pursue all rights and remedies available under this Agreement.
County reserves the right to waive any and all breaches of this Agreement, and any such waiver will not be deemed a waiver of all previous or subsequent breaches. In the event County chooses to waive a particular breach of this Agreement, it may condition same on payment by Borrower of actual damages occasioned by such breach of Agreement and shall make every effort to resolve the same quickly and amicably.

5. **Availability of Funds**
Notwithstanding any other provisions in this Agreement, County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon unavailability of County funds by providing written notice to Borrower as soon as is reasonably possible after County learns of said unavailability of such funding. The County confirms that, as of the execution date of this Agreement, County funds are available for this loan and have been designated for CORA.

6. **Relationship of Parties**
Borrower agrees and understands that work/services performed pursuant this Agreement are performed by the Borrower as conditions of receiving loan funding, and not as an employee or joint venture of County and that neither Borrower nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

7. **General Hold Harmless**
Borrower shall indemnify and save harmless County and its officers, agents, employees, and servants from all claims, suits or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Borrower under this Agreement, or loan disbursement made pursuant to this Agreement brought for, or on account of, any of the following:

   A) Injuries to or death of any person, including Borrower or its employees/officers/agents;
   B) Damage to any property of any kind whatsoever and to whomsoever belonging;
   C) Any sanctions, penalties, or claims of damages resulting from Borrower's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or
   D) Any other loss or cost, including, but not limited to, that caused by the concurrent active or passive negligence of County and/or its officers, agents, employees, or servants. However, Borrower's duty to indemnify and save harmless under this Section shall not apply to injuries or damage to the extent for which County has been found in a court of competent jurisdiction to be liable by reason of its own negligence or willful misconduct.

The duty of Borrower to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. **Assignability and Subcontracting**
Except as permitted in the Deed(s) of Trust or elsewhere in this Agreement, Borrower shall not assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by Borrower under this Agreement without the prior written consent of County. Any such assignment or subcontract without the County's prior written consent will give County the right to automatically and immediately terminate this Agreement. Notwithstanding the foregoing restrictions, Borrower may, with County's prior written consent which shall not be unreasonably withheld, assign its rights and obligations under this Agreement to a limited
partnership formed to develop and own the Project. In connection with such assignment, County and Borrower acknowledge and agree that this Agreement and any other Loan documents may be amended and restated to reflect such assignment.

9. **Insurance**

Borrower shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by County’s Risk Management, and Borrower shall use diligence to obtain such insurance and to obtain such approval. Borrower shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Borrower’s coverage to include the contractual liability assumed by Borrower pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days’ notice must be given, in writing, to County of any cancellation of the policy for reasons other than non-payment of premium, and 10 days’ notice of cancellation of the policy for non-payment of premium.

A) **Workers’ Compensation and Employer’s Liability Insurance.** Borrower shall have in effect during the entire term of this Agreement workers’ compensation and employer’s liability insurance providing full statutory coverage. In signing this Agreement, Borrower certifies, as required by Section 1861 of the California Labor Code,

i. That it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of the Labor Code; and,

ii. That it will comply with such provisions before commencing the performance of work under this Agreement.

B) **Liability Insurance.** Borrower shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Borrower and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Borrower’s operations funded under this Agreement, whether such operations be by Borrower, any subcontractor, anyone directly or indirectly employed by either of them, or by an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amount specified below.

Such insurance shall include:

i. Comprehensive General Liability $1,000,000

ii. Motor Vehicle Liability Insurance $1,000,000

iii. Professional Liability $1,000,000

County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that:

A) The insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy; and,

B) If the County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.
In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further disbursement of funding pursuant to this Agreement until the breach is cured.

10. **Compliance with Laws; Payments of Permits / Licenses**

   All services to be performed by Borrower pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

   Further, Borrower certifies that Borrower and all of its subcontractors will adhere to all applicable provisions of Chapter 4.106 of the San Mateo County Ordinance Code, which regulates the use of disposable food service ware.

   Borrower will timely and accurately complete, sign, and submit all necessary documentation of compliance.

11. **Non-Discrimination and Other Requirements**

   A) **General non-discrimination.** No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

   B) **Equal employment opportunity.** Borrower shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Borrower's equal employment policies shall be made available to County upon request.

   C) **Section 504 of the Rehabilitation Act of 1973.** Borrower shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement. This Section applies only to Borrowers who are providing services to members of the public under this Agreement.
D) **Compliance with County's Equal Benefits Ordinance.** With respect to the provision of benefits to its employees, Borrower shall comply with Chapter 2.84 of the County Ordinance Code, which prohibits Borrowers from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse. In order to meet the requirements of Chapter 2.84, Borrower must certify which of the following statements is/are accurate:

- [ ] Borrower complies with Chapter 2.84 by:
  - offering the same benefits to its employees with spouses and its employees with domestic partners.
- [ ] offering, in the case where the same benefits are not offered to its employees with spouses and its employees with domestic partners, a cash payment to an employee with a domestic partner that is equal to Borrower's cost of providing the benefit to an employee with a spouse.
- [ ] Borrower is exempt from having to comply with Chapter 2.84 because it has no employees or does not provide benefits to employees' spouses.
- [ ] Borrower does not comply with Chapter 2.84, and a waiver must be sought.

E) **Discrimination Against Individuals with Disabilities.** The Borrower shall comply fully with the nondiscrimination requirements of 41 C.F.R. 60-741.5(a), which is incorporated herein as if fully set forth.

F) **History of Discrimination.** Borrower must check one of the two following options, and by executing this Agreement, Borrower certifies that the option selected is accurate:

- [ ] No finding of discrimination has been issued in the past 365 days against Borrower by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other investigative entity.
- [ ] Finding(s) of discrimination have been issued against Borrower within the past 365 days by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. If this box is checked, Borrower shall provide County with a written explanation of the outcome(s) or remedy for the discrimination.

G) **Violation of Non-discrimination provisions.** Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to the following:

i) termination of this Agreement;

ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;

iii) liquidated damages of $2,500 per violation; and/or

iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.
To effectuate the provisions of this Section, the County Manager shall have the authority to examine Borrower's employment records with respect to compliance with this Section and/or to set off all or any portion of the amount described in this Section against amounts due to Borrower under this Agreement or any other agreement between Borrower and County.

Borrower shall report to the County Manager the filing by any person in any court of any complaint of discrimination against Borrower or the filing by any person against Borrower of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission, or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Borrower that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Borrower shall provide County with a copy of their response to the Complaint when filed.

12. **Compliance with County Employee Jury Service Ordinance**

For all agreements with a total contract amount exceeding $100,000 inclusive of amendments, Borrower shall comply with Chapter 2.85 of the County's Ordinance Code, which states that a Borrower shall have and adhere to a written policy providing that its employees, to the extent they live in San Mateo County, shall receive from the Borrower, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Borrower or that the Borrower may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Borrower certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Borrower has no employees in San Mateo County, it is sufficient for Borrower to provide the following written statement to County: “For purposes of San Mateo County's jury service ordinance, Borrower certifies that it has no employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Borrower shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code.”

13. **Retention of Records, Right to Monitor and Audit**

A) Borrower shall maintain all required records for five (5) years after County makes final payment and all other pending matters are closed, and Borrower shall be subject to the examination and/or audit of County, a Federal grantor agency, and the State of California.

B) Reporting and Record Keeping: Borrower shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State, and local agencies, and as required by County.

C) Borrower agrees upon reasonable notice to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representatives, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

14. **Lobbying Prohibited**

Federal funds will not be used by Borrower for publicity or propaganda purposes designed to support or defeat legislation pending before federal, state or local government. Federal funds will
not be used by Borrower to lobby or 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 award of any Federal contract.

15. **Influencing Prohibited**
   A) No Federal appropriated funds have been paid or will be paid, by or on behalf of Borrower to any person for influencing or attempting to influence 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 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 Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, Borrower will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions; and
   C) The language of paragraphs 15A and 15B will 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.

16. **Merger Clause & Amendments**
   This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated herein by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

17. **Controlling Law and Venue**
   The validity of this Agreement and of its terms or provisions, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

18. **Notices**
   Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both:
   
   A) Transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and
   B) Sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an
established overnight courier that provides a tracking number showing confirmation of receipt.

<table>
<thead>
<tr>
<th>In the case of County, to:</th>
<th>In the case of Borrower, to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name/Title: Ken Cole, Director</td>
<td>Name/Title: Alex McIntyre</td>
</tr>
<tr>
<td>Department of Housing</td>
<td>City Manager</td>
</tr>
<tr>
<td>County of San Mateo</td>
<td>City of Menlo Park</td>
</tr>
<tr>
<td>Address: 262 Harbor Blvd., Bldg. A</td>
<td>Address: 701 Laurel Street</td>
</tr>
<tr>
<td>Belmont, CA 64002-4017</td>
<td>Menlo Park, CA 94043</td>
</tr>
<tr>
<td>Telephone: 650-802-5024</td>
<td>Telephone: 650 3302200</td>
</tr>
<tr>
<td>Facsimile: 650-802-5049</td>
<td>Facsimile: 650-324-1721</td>
</tr>
<tr>
<td>Email: <a href="mailto:kcole@smchousing.org">kcole@smchousing.org</a></td>
<td>Email: <a href="mailto:nabonham@menlopark.org">nabonham@menlopark.org</a></td>
</tr>
</tbody>
</table>

19. **Electronic Signature**

If both County and Borrower wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo, both boxes below must be checked. Any party that agrees to allow digital signature of this Agreement may revoke such agreement at any time in relation to all future documents by providing notice pursuant to this Agreement.

For County: □ If this box is checked by County, County consents to the use of electronic signatures in relation to this Agreement.

For Borrower: X If this box is checked by Borrower, Borrower consents to the use of electronic signatures in relation to this Agreement.

**THIS CONTRACT IS NOT VALID UNTIL SIGNED BY ALL PARTIES.**

REST OF PAGE DELIBERATELY LEFT BLANK.

[SIGNATURES ON FOLLOWING PAGE]
IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: ________________________

Director, Department of Housing, San Mateo County

Date: 1-18-12-2018

BORROWER: CITY OF MENLO PARK

By: ________________________

Borrower's Signature (use blue ink only)

Print Name: Alex McIntyre

Print Title: City Manager

Date: July 1, 2017
Exhibit A

Project Description and Requirements

In consideration of the payments set forth in Exhibit B and also described below, Borrower shall undertake the following activities and comply with the following restrictions and requirements:

I. Project Overview

Project Description/Eligible Costs: The Belle Haven Child Development Center, at 410 Ivy Drive in Menlo Park, offers subsidized preschool programs for qualifying low-income families. The Center has not been remodeled since 2002 when the program moved in. It currently serves 96 children year-around. The remodel will consist of remodeling the kitchens and bathrooms, painting the entire facility, and installing new flooring in all four classrooms, offices and the multipurpose room. HUD funding will be used to replace the flooring and City of Menlo Park will fund the remainder of the work from the City's General Fund.

Year 1 Performance Measures:

Total Annual Participants – 96 participants

**Participation is based on monthly enrollment in the program over a year and which accounts for the number served. Actual attendance varies daily and monthly.

II. Terms and Conditions

Funding is subject to Borrower's satisfactory performance of the terms and conditions as set forth in the Agreement including but not limited to Exhibit A.

1) Construction-Triggered Requirements. Construction work on the Project will comply with federal Section 504 requirements for persons with physical and sensory accessibility needs, and applicable federal prevailing wage requirements under Davis-Bacon, described herein, Section 3 local low income hiring goals, in addition to all other applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter that govern the construction. As applicable, Borrower will comply with federal relocation requirements referenced in Paragraph 9 in this Exhibit. County will review and approve Borrower's relocation plan prior to Borrower undertaking any relocation of Project occupants. Exhibit E describes the federal requirements.

2) Use of Funds. Funds provided in this Agreement will be used for eligible costs associated with the Project. Borrower has provided County with a breakdown of costs to be reimbursed in this Agreement, also summarized in the table below. Both parties agree this breakdown is subject to refinement which County Department of Housing ("DOH" or "County") will review and approve. DOH and Borrower understand that the costs are estimates and subject to variability. Should there be a substantial change in work scope activities and/or estimated costs (defined as a 10% +/- variance in line item cost estimate), Borrower shall inform DOH in writing for County review and approval. In the event of uncertainty, DOH will make the determination of substantial change.
3) Prior to the first draw request/request for reimbursement and at either each subsequent funding draw request or upon submission of the quarterly performance report described later in this Exhibit A, but not less frequently than quarterly throughout the Performance Period as defined below in Paragraph 12 of this Exhibit A, Borrower shall provide DOH with an updated performance schedule, including milestones, for use of funds, including tasks to be performed, and a timeline for completing tasks within the overall Project budget and Agreement term.

4) NEPA Environment Review (applies to Projects receiving CDBG and/or HOME funds): Prior to disbursement of funds under this agreement, a HUD-required environmental review (ER) under the National Environmental Protection Act (NEPA) will be undertaken by DOH on behalf of the County to determine any environmental impacts on the physical and built environment. Non-staff costs to prepare the ER will be deducted from the proceeds of funding provided in this agreement. In no case will funds be disbursed to Borrower for the Project until the ER has been completed to the satisfaction of DOH and/or HUD.

5) Conditional Commitment of Funds (applies to Projects receiving CDBG and/or HOME funds): Should the NEPA process not be completed prior to execution of this Agreement, notwithstanding any provision of this Agreement to the contrary, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval, and that any such commitment of funds or site approval may occur only after satisfactory completion of environmental review and receipt by the County of San Mateo of a release of funds from the U.S. Department of Housing and Urban Development ("HUD"), as the case may be. The parties further agree that the provision of any funds to the Project is conditioned on the County's absolute right to proceed with, modify or cancel the Project based on the results of a subsequent environmental review, as necessary. Prior to the environmental clearance, Borrower shall not undertake any physical or choice-limiting actions, including property acquisition, demolition, movement, rehabilitation, conversion, repair or construction. Violation of this provision may result in the denial of any funds under the Agreement.

6) NEPA Conditions of Approval (applies to Projects receiving CDBG and/or HOME funds): Should the ER establish conditions of approval for funding, Borrower shall comply with these conditions. DOH may require a separate written assurance regarding Borrower compliance.
7) **Property Standards.** Construction of the Project must fully comply with all applicable local and State building codes and regulations. Improvements to existing residential property must meet federal lead-based paint standards referenced in Exhibit E.

8) **Performance Schedule and Quarterly Performance Reporting.** Prior to the first draw request/request for reimbursement and at each subsequent funding draw request, Borrower shall provide County Department of Housing ("DOH") with a performance schedule, including milestones for use of such funds and tasks to be performed, and a timeline for completing such tasks within the overall Project Budget, as shown in Paragraph 1 of this Exhibit A., and shall provide timely updated performance schedules reflecting any changes as they become known. During the Performance Period, Borrower shall submit to DOH a Quarterly Performance Report within 30 days of the end of each quarter. The report should be in the form of a narrative description of all activities performed in relation to the project, including all pre-development activities. The report should include an updated performance schedule, including a schedule for completing milestones and/or tasks, and indicate the status of the project in relationship to this time-line. Borrower must document any changes from the time-line submitted with the most recent funding application. Quarterly performance reports will be provided to DOH during the course of the Project until Project completion, even if all of the funds provided under this Agreement have been expended. This report requirement is in addition to any information submitted with requests for reimbursement.

9) **Project Completion Reporting.** Upon completion of the project, Borrower shall provide reports depending on the Project type and in a format provided by DOH. Completion reports include, but are not limited to: a Project Completion audit or other audit required under tax credit requirements or other affordable funder performed by an independent certified public accountant identifying the sources and uses of all Project funds; Project Financial Completion Report (sources and uses of funding), which shows the total of all funds expended for the Project. Should Project financing involve tax credits or other financing requiring the preparation of a final Project Cost Audit ("Cost Audit"), Borrower shall provide a copy of such audit to DOH within the same timeframe prescribed by the funding source requiring such audit.

10) **Monitoring.** In accordance with the Agreement provision pertaining to *Retention of Records*, during the Performance and Compliance Periods described in this Exhibit, County may undertake monitoring of Borrower's records and premises for program compliance.

DOH may review documents relevant to the financial condition of Projects to ensure long-term viability. DOH will conduct a monitoring review of Project periodically according to HUD requirements for affordability and other standards. Monitoring visits will consist of the following:
a. On-site inspections of selected units/common areas and resident files. All units and files need to be accessible during the monitoring visit for random sampling.

11) **Contract Number.** All correspondence, invoices, payments, and reports must include the County contract number.

12) **Repayment.** No payment shall be required since this will be a CDBG grant to a City Public Facility.

**Exhibit B- Disbursement and Rates**

Funding under this Agreement is to be used to support work scope activity and delivery costs enumerated in Exhibit A. None of the funding shall be used to support Borrower's general administration costs. Subject to the terms of the Agreement, County shall disburse loan funds to Borrower based on the following fee schedule and terms:

Except in cases in which funding provided in this Agreement will be used for property acquisition, funding assistance by County will be provided upon submission of reimbursement requests by Borrower to the County. Requests for reimbursement shall include copies of invoices paid, together with warrants, canceled checks, or other proof that the invoices have been paid. The request must include a brief narrative description of the progress of the Project and the items being reimbursed.

Borrower shall certify in writing that the specific services for which funding assistance is being requested have been satisfactorily completed, that the amounts requested are accurate and that all such amounts are being or have been expended on behalf of and exclusively for the project. County reserves the right to verify the accuracy and completeness of such certification prior to payment to Borrower.

**Alternative Payment/Reimbursement Process:** In no event shall County reimburse Borrower for any payments exceeding the total amount stated in Section 3 (Payments) of this Agreement. Borrower authorization for requests for reimbursement through CDS must be from an authorized representative of Borrower. By requesting authorization for payment reimbursement, Borrower certifies that the specific services for which reimbursement or payment is being requested have been satisfactorily completed, that the payments are proper and that all funds to be expended are on behalf of and exclusively for the activity or services described in Exhibit A. County reserves the right to verify completion prior to or after reimbursement/payment to Borrower.

**Questionable Disbursement Request:** In the event of a questionable disbursement request, the County will state in writing the specific nature of its objections to Borrower's disbursement request. If applicable, the County will also specify what actions or changes are necessary to make the work for which disbursement is sought acceptable. Borrower shall respond to County within 15 days of receipt of such objections. The parties to this Agreement shall meet to discuss such objections at the request of either party. The County will not be obligated to disburse payment for any billing until any and all objections to the adequacy of the services rendered or the amount of the billing have been resolved.
Exhibit C: § 504 Compliance

ASSURANCE OF COMPLIANCE WITH SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED

The undersigned (hereinafter called "Borrower(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Borrower(s) gives/give this assurance in consideration of for the purpose of obtaining a loan after the date of this assurance. The Borrower(s) recognizes/recognize and agrees/agree that funds will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Borrower(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Borrower(s).

The Borrower(s): (Check a or b)
- a. Employs fewer than 15 persons.
- b. Employs 15 or more persons and, pursuant to section 84.7 (a) of the regulation (45 C.F.R. 84.7(a), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

<table>
<thead>
<tr>
<th>Name of 504 Person:</th>
<th>Natalie Bonham</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of Borrower(s):</td>
<td>City of Menlo Park</td>
</tr>
<tr>
<td>Street Address or P.O. Box:</td>
<td>701 Laurel Street</td>
</tr>
<tr>
<td>City, State, Zip Code:</td>
<td>Menlo Park, Ca 94043</td>
</tr>
</tbody>
</table>

I certify that the above information is complete and correct to the best of my knowledge

Signature: [Signature]

Title of Authorized Official: [City Manager]

Date: 10/28/17

*Exception: DHHS regulations state that: "If a recipient with fewer than 15 employees finds that, after consultation with a disabled person seeking its services, there is no method of complying with (the facility accessibility regulations) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."
Exhibit D
Borrower's Declaration Form

I. BORROWER INFORMATION

<table>
<thead>
<tr>
<th>Borrower Name:</th>
<th>Alex McIntyre</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contact Person:</td>
<td>Natalie Bonham</td>
</tr>
<tr>
<td>Address:</td>
<td>701 Laurel Street Menlo Park, Ca 94043</td>
</tr>
<tr>
<td>Phone:</td>
<td>650-330-2200</td>
</tr>
<tr>
<td>Fax:</td>
<td>650-324-1721</td>
</tr>
</tbody>
</table>

II. EQUAL BENEFITS (check one or more boxes)
Borrowers with contracts in excess of $5,000 must treat spouses and domestic partners equally as to employee benefits.

☑️ Borrower complies with the County's Equal Benefits Ordinance by:
☒️ offering equal benefits to employees with spouses and employees with domestic partners.
☒️ offering a cash equivalent payment to eligible employees in lieu of equal benefits.

☒️ Borrower does not comply with the County's Equal Benefits Ordinance.

☒️ Borrower is exempt from this requirement because:
☒️ Borrower has no employees, does not provide benefits to employees' spouses, or the contract is for $5,000 or less.
☒️ Borrower is a party to a collective bargaining agreement that began on _____ (date) and expires on _____ (date), and intends to offer equal benefits when said agreement expires.

III. NON-DISCRIMINATION (check appropriate box)

☒️ Finding(s) of discrimination have been issued against Borrower within the past year by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. Please see attached sheet of paper explaining the outcome(s) or remedy for the discrimination.

☒️ No finding of discrimination has been issued in the past year against the Borrower by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other entity.

IV. EMPLOYEE JURY SERVICE (check one or more boxes)
Borrowers with original or amended contracts in excess of $100,000 must have and adhere to a written policy that provides its employees living in San Mateo County up to five days regular pay for actual jury service in the County.

☒️ Borrower complies with the County's Employee Jury Service Ordinance.

☒️ Borrower does not comply with the County's Employee Jury Service Ordinance.

☒️ Borrower is exempt from this requirement because:
☒️ the contract is for $100,000 or less.
☒️ Borrower is a party to a collective bargaining agreement that began on _____ (date) and expires on _____ (date), and intends to comply when the collective bargaining agreement expires.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Signature

Date

Name

Title
I. STATEMENT OF WORK §570.503 (b)(1)

See Exhibit A.

II. RECORDS AND REPORTS §570.503 (b)(2)

Notwithstanding Section 13A of the Agreement, the Borrower shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of five (5) years after completion of all services rendered under this Agreement.

III. PROGRAM INCOME §570.503 (b)(3)

If specifically authorized in this agreement, Borrower may keep CDBG program income. In all cases CDBG program income must be used for CDBG eligible activities. Program income is defined at 24 CFR 570.500 as gross income that is directly generated from the use of CDBG funds. Program income includes, but is not limited to: proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds; proceeds from the disposition of equipment purchased with CDBG funds; gross income from the use or rental of real or personal property acquired with CDBG funds, less costs incidental to generation of the income; and gross income from the use or rental of real property that was constructed or improved with CDBG funds, less costs incidental to generation of income. For activities funded with CDBG funds, Borrower shall comply with CDBG program income requirements at 24 CFR 570.503 and 504. Unless specifically designated otherwise by the County herein, any program income on hand when the agreement expires, or received after the agreement's expiration, will be transferred to the County.

IV. UNIFORM ADMINISTRATIVE REQUIREMENTS §570.503 (b)(4)

A. Borrower, if a governmental entity or public agency, shall comply with the requirements and standards of OMB Circular No. A-87, “Principles for Determining Costs Applicable to Grants and Contracts with State, Local and Federally Recognized Indian Tribal Governments”, OMB Circular A-133, “Audits of State, Local Governments and Non-Profit Organizations”, and applicable sections of 24 CFR §85 “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments”, as set forth in 24 CFR §570.502 (a).


V. OTHER PROGRAM REQUIREMENTS §570.503 (b)(5)

Borrower, to the extent applicable to this Agreement, shall comply with the following Federal laws and regulations as set forth in 24 CFR §570.600-612:
A. Public Law 88-352, Title VI of the Civil Rights Act of 1964, which provides that no person in the United States shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, including community development funds, on the grounds of race, color, or national origin. §570.601 (a)(1)

B. Public Law 90-284, Fair Housing Act (42 U.S.C. §§3601-20), which provides that it is the policy of the United States to provide, within constitutional limitations, fair housing throughout the United States and prohibits any person from discriminating in the sale, rental, or financing of housing on the basis of race, color, religion, sex, national origin handicap or familial status. The Fair Housing Act, as amended in 1988, also establishes requirements for the design and construction of new rental or for sale multifamily housing to ensure a minimum level of accessibility for persons with disabilities. Multifamily dwelling units in buildings containing 4 or more units served by one or more elevators, or ground floor dwellings units with 4 or more units, constructed for first occupancy after March 13, 1991, must be designed and constructed in a manner that the public and common use portions of such dwellings are readily accessible to and usable by disabled persons. All premises within such dwellings must incorporate features of adaptive design regarding accessibility routes into and through the dwelling and design features within the units. (Regarding accessibility design issues, State accessibility requirements will prevail if they are stricter than federal requirements.) §570.601 (a)(2)

C. Age Discrimination Act of 1975, which prohibits discrimination on the basis of age in the delivery of services, programs or benefits supported by Federal funds. §570.602

D. Rehabilitation Act of 1973, Section 504, which prohibits discrimination against otherwise qualified handicapped persons in the provision of programs, facilities and employment supported by Federal funds. §570.602

In the case of multifamily rental housing, projects of five or more units must be designed and constructed to be readily accessible to and usable by persons with disabilities. For new construction involving five or more units, and substantial rehabilitation projects of 15 or more units (with substantial rehabilitation defined as rehabilitation costs representing 75% or more of the replacement costs of the completed facility), the following requirements must be followed - a minimum of 5% of the dwelling units must be accessible to individuals with mobility impairments and an additional 2% accessible to individuals with sensory impairments. At the minimum, one unit shall be made accessible to mobility-impaired individuals and one unit accessible to sensory impaired individuals. When less than substantial rehabilitation is undertaken in multifamily rental housing projects of any size, these alterations must, to the maximum extent feasible, make the dwelling units accessible to and usable by individuals with disabilities, until a minimum of 5% of the dwelling units (but not less than one unit) are accessible to persons with mobility impairments; for this category of less than substantial rehabilitation, the additional 2% of the units for persons with sensory impairments does not apply. Also for this category of rehabilitation, if undertaking accessibility alterations imposes undue financial and administrative burdens on the operation of the multifamily housing project, the alterations are not required.
In the case of non-housing facilities involving new construction, the facilities shall be
designed and constructed to be readily accessible to and usable by persons with
disabilities. For facilities involving alterations, to the extent possible, the alterations should
ensure that such facilities are readily accessible to and usable by individuals with
disabilities. An element of an existing non-housing facility need not be made accessible,
if doing so, would impose undue financial and administrative burdens on the operation of
the recipient program or activity. (However, State law will prevail if State accessibility
requirements are stricter than federal 504 requirements.) Recipients are still required to
take other actions that would ensure that persons with disabilities receive the benefits and
services of the program.

E. Davis-Bacon Act, which requires that all laborers and mechanics employed by contractors
or subcontractors on construction work financed in whole or in part with Federal funds
shall be paid prevailing wages of the locality as determined by the Secretary of Labor.
§570.603

F. Contract Work Hours and Safety Standards Act. Must be included in all construction
contracts that exceed $2,000 and in all other contracts involving the employment of
mechanics or laborers that exceed $2,500. The provision requires compliance with
Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.
§§327-330) as supplemented by Department of Labor Regulations at 29 CFR Part 5. The
Contract Work Hours and Safety Standards Act requires Borrowers to compute the wages
of every mechanic and laborer on the basis of a standard work week of 40 hours. Work
in excess of the standard work week is permissible provided that the worker is
compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked
in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction
work and provides that no laborer or mechanic shall be required to work in surroundings
or under working conditions which are unsanitary, hazardous or dangerous. These
requirements do not apply to the purchases of supplies or materials or articles ordinarily
available on the open market, or contracts for transportation or transmission of
intelligence. §570.603

G. Environmental Standards – NA. §570.604

H. Flood Disaster Protection Act of 1973, which provides that no federal financial assistance
for acquisition or construction purposes may be approved for an area having special flood
hazards unless the community in which the area is located is participating in the National
Flood Insurance Program. §570.605

I. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, which
provides for relocation assistance for any family, individual, business, non-profit
organization or farm displaced as a result of acquisition of property with federal funds.
§570.606

J. Executive Order 11246, as amended by Executive Order 12086, Equal Employment and
Contracting Opportunities, which provides that no person shall be discriminated against
on the basis of race, color, religion, sex, or national origin in all phases of employment
during the performance of federally assisted construction contracts. §570.607 (a)
K. Housing and Urban Development Act of 1968, Section 3 (24 CFR 135.38), which requires that, in the planning and carrying out of any project assisted under the Act, that to the greatest extent feasible, opportunities for training and employment be given to low- and moderate-income persons residing within the MSA in which the project is located, and that contracts for work in connection with the project be awarded to eligible business concerns which are located in, or owned in substantial part by persons residing in the MSA as the project. For all construction and rehab projects receiving $100,000 or more of CDBG or HOME financial assistance, to the greatest extent feasible, economic opportunities will be given to Section 3 residents and businesses in the MSA. Section 3 Residents are defined as: 1) residents of public housing; or 2) low and very-low income persons living in the MSA. Section 3 Businesses are defined as businesses: 1) that are at least 51% owned by Section 3 Residents; 2) whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents; or 3) that provide evidence of a commitment to subcontract to Section 3 business concerns in excess of 25% of the dollar award of all subcontracts awarded. Borrowers must maintain appropriate documentation of their efforts to comply with Section 3 requirements. §570.607 (b)

L. Lead-Based Paint Poisoning Act, which prohibits the use of lead-based paint in residential structures constructed or rehabilitated with Federal assistance. §570.608

M. Housing & Community Developments Act of 1974, 24 CFR Part 5, which provides that assistance shall not be used directly or indirectly to employ, award contracts to, or otherwise engage the services of, or fund any Borrower or sub recipient during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR part 24. This provision covers all Borrowers and subrecipients, as well as subcontractors of Borrower or subrecipient, whose names are included in the “List of Parties Excluded from Federal Procurement and Nonprocurement Programs.” Inclusion in the aforementioned List during the term of this agreement would constitute grounds for contract termination as described in Sections 1 and 2 herein this Exhibit. The aforementioned List can be found on the Web at http://ep.s.arnet.gov. §570.609

N. Uniform Administrative Requirements and Cost Principles – See Item 4 above. §570.610

O. Conflict of Interest - No members, officers, or employees or agents of County, no member of the County's Board of Supervisors, and no other public official who exercises any function or responsibility with respect to this Program during his/her tenure, or for one year thereafter, shall have any financial interest, direct or indirect, in this Agreement or a related subcontract, or the proceeds thereof.

During his/her tenure, and for one year thereafter, no member, officer, board member or employee or agent of Borrower who exercises any function or responsibility with respect to Borrower's performance hereunder, shall have any personal financial interest, direct or indirect, in any real property or improvements receiving a direct benefit from the Program. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award.
Borrower shall not contract with any third party or subcontractor that will cause a violation of the preceding paragraph. Borrower shall incorporate the above provision into all contracts awarded in connection with this Agreement. §570.611

P. Executive Order 12371 – NA §570.612

VI. BREACH OF AGREEMENT §570.503 (b)(6)

This Agreement is governed by applicable federal statutes and regulations, as referred to elsewhere herein. Any material deviation by Borrower for any reason from the requirements thereof, or from any other provision of this Agreement, shall constitute a breach of this Agreement and may be cause for termination at the election of County or upon the direction of HUD.

AGREEMENT TERMINATION §570.503 (b)(6)

In the event Borrower is unable to fulfill its responsibilities under this Agreement for any reason whatsoever, including circumstances beyond its control, County may terminate this Agreement in whole or in part in the same manner as for breach hereof, provided Borrower is afforded the cure period provided in this Agreement.

VII. REVERSION OF ASSETS §570.503 (b)(7)

The sub-recipient shall transfer to the recipient any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. Any real property under Borrower's control that was acquired or improved in whole or in part with CDBG funds (including CDBG funds provided to Borrower in the form of a loan) in excess of $25,000 is either:

A. Used to meet one of the national objectives in §570.208 until five years after expiration of the agreement, or longer for such longer period of time as determined to be appropriate by the recipient; or
B. Not used in accordance with 7A above, in which event Borrower shall pay to the recipient an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property. The payment is program income to the recipient. (No payment is required after the period of time specified in 7A above.)

VIII. The CFDA # for the entitlement programs to which this applies are as follows:

A. Community Development Block Grant (CDBG): 14.218
B. Emergency Shelter Grant (ESG): 14.231
C. HOME Investment Partnership (HOME): 14.239
D. McKinney Supportive Housing: 14.235