

RESOLUTION 2014-103R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING A STANDARD FORM OF SUBRECIPIENT AGREEMENT FOR THE AWARD OF COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS; AUTHORIZING THE CITY MANAGER TO EXECUTE THESE AGREEMENTS ON BEHALF OF THE CITY; AND DECLARING AN EFFECTIVE DATE.

RECITALS:

1. The City receives an annual allocation of Community Development Block Grant ("CDBG") funds.

2. The City Council wishes to disburse these allocated CDBG funds in a uniform manner by adopting a standard form of Subrecipient Agreement between the City and approved subrecipients.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

PART 1. The attached form of Subrecipient Agreement to be used by the City and various qualified subrecipients for their receipt of CDBG funds is approved.

PART 2. The City Manager may, subject applicable program rules and approved funding amounts, negotiate the terms of each agreement to fit the type of activity to be undertaken by each duly approved subrecipient.


PART 3. The City Manager is authorized to execute these agreements on behalf of the City.

PART 4. This Resolution shall be in full force and effect immediately from and after its passage.

ADOPTED on July 15, 2014.


Daniel Guerrero
Mayor

Attest:


Jamie Lee Pettijohn
City Clerk

SUBRECIPIENT AGREEMENT # _____

AN AGREEMENT BETWEEN THE CITY OF SAN MARCOS
AND
[Non-Governmental Subrecipient]
FOR
[NAME OF CDBG PROGRAM]

THIS AGREEMENT is made and effective as of the _____ day of _____, 20____ by and between the City of San Marcos (herein called the "City") and _____ (herein called the "Subrecipient").

WHEREAS, the City has applied for and received funds from the United States Government under Title I of the Housing and Community Development Act of 1974, as amended (HCD Act), Public Law 93-383; and

WHEREAS, the City wishes to engage the Subrecipient to assist the City in utilizing such funds; NOW,

THEREFORE, it is agreed between the parties hereto that;

I. STATEMENT OF WORK

A. Activities

The Subrecipient will be responsible for administering a CDBG Year [] [Name of Program] in a manner satisfactory to the City and consistent with any standards required as a condition of providing these funds. Such program will include the following activities eligible under the Community Development Block Grant program:

Program Summary

[A description of the program in sufficient detail to provide a sound basis of understanding of the program's intent.]

Program Delivery

Activity #1 *[Complete description of activity to be undertaken including what products or services are to be performed, where they are to be provided, for whom they are to be provided, how they are to be provided]*

Activity #2 *[Same description as above]*

Activity #3 *[Same description as above]*

General Administration

[Add description of general administrative services to be performed in support of activities noted above]

B. National Objectives

All activities funded with CDGB funds must meet one of the CDBG program's National Objectives: (a) benefit low- and moderate-income persons; (b) aid in the prevention or elimination of slums or blight; or (c) meet community development needs having a particular urgency, as defined in 24 CFR 570.208.

The Subrecipient certifies that the activity (ies) carried out under this Agreement will meet National Objective _____ as defined above. *[Indicate which National Objective]* The National Objective will be met in the following manner: _____

C. Levels of Accomplishment - Goals and Performance Measures

The levels of accomplishment may include such measures as units rehabbed, persons or households assisted, or meals served, and should also include time frames for performance.

The Subrecipient agrees to provide the following levels of program services:

<u>Activity</u>	<u>Units per Month</u>	<u>Total Units/Year</u>
Activity #1	<i>[# of Units]</i>	<i>[# of Units]</i>
Activity #2	<i>[# of Units]</i>	<i>[# of Units]</i>
Activity #3	<i>[# of Units]</i>	<i>[# of</i>
[Add other activities as necessary]		<i>Units]</i>

[NOTE: Provide definition of Units of Service here.]

D. Performance Monitoring

The City will monitor the performance of the Subrecipient against goals and performance standards as stated above. Substandard performance as determined by the City will constitute noncompliance with this Agreement. The City will send written notification of noncompliance including a deadline for remedying the issue. If action to correct such substandard performance is not taken by the Subrecipient by the deadline given in the written notice within a reasonable period of time after being notified by the City, contract suspension or termination procedures will be initiated.

II. TIME OF PERFORMANCE

A. The effective date of this Agreement is the _____ day of _____, 20__ and the termination date will be the end on the _____ day of _____, 20___. The term of this Agreement and the provisions herein shall be extended to cover any additional time period during which the Subrecipient remains in control of CDBG funds or other CDBG assets, including program income.

B. Performance Schedule:

Projected Start Date:		Projected End Date:	
Activity Description	Start Mo/Yr	End Mo/Yr	Performance Measurement Goal

III. **BUDGET**

Program Activity	CDBG Funds	Other Funds	Other Funding Source
Environmental Review Expenses*			
Program Deliverables or Administration			
Activity 1			
Activity 2			

*The Environmental Review shall be performed by the City. Unexpended funds from this line item may be used by the Subrecipient for any activity approved under the terms of this Agreement upon receipt of notice from the City without a formal amendment to this Agreement.

Any indirect costs charged must be consistent with the conditions of Paragraph VIII (C)(2) of this Agreement. In addition, the City may require a more detailed budget breakdown than the one contained herein, and the Subrecipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the City. Any amendments to the budget must be approved in writing by both the City and the Subrecipient.

IV. **PAYMENT**

It is expressly agreed and understood that the total amount to be paid by the City under this Agreement shall not exceed \$_____. Drawdowns for the payment of eligible expenses shall be made following the submission of completed pay requests that include all required documentation.

Payments may be contingent upon certification of the Subrecipient's financial management system in accordance with the standards specified in 24 CFR 84.21.

V. NOTICES

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery or sent by facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

Communication and details concerning this contract shall be directed to the following contract representatives:

City Subrecipient

City Manager

Executive Director

City of San Marcos
630 East Hopkins
San Marcos TX 78666
Phone: 512-393-8230
Fax

Subrecipient Name
Address
City, State, Zip Code
Phone

VI. SPECIAL CONDITIONS

[This section of the Agreement can be used by City to include special conditions specific to the particular activity or individual Subrecipient.]

VII. GENERAL CONDITIONS

A. General Compliance

The Subrecipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart K of these regulations, except that (1) the Subrecipient does not assume the recipient's environmental responsibilities described in 24 CFR 570.604 and (2) the Subrecipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Subrecipient also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this contract. The Subrecipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. "Independent Contractor"

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Subrecipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The City shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as the Subrecipient is an independent contractor.

C. Hold Harmless

The Subrecipient shall hold harmless, defend and indemnify the City from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Subrecipient's performance or nonperformance of the services or subject matter called for in this Agreement.

D. Workers' Compensation

The Subrecipient shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

E. Insurance & Bonding

The Subrecipient shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the City.

The Subrecipient shall comply with the bonding and insurance requirements of 24 CFR 84.31 and 84.48, Bonding and Insurance.

Subrecipients funded for construction activities will procure and maintain at Subrecipient's expense insurance with insurance companies authorized to do business in the State of Texas, covering all operations under this Agreement, whether performed by Subrecipient or Subrecipient's agents, subcontractor or employees. Before commencing any services under this Agreement, Subrecipient will furnish to the City a certificate or certificates in a form satisfactory to the City, showing that Subrecipient has complied with the insurance requirements outlined below. All certificates will provide that the policy will not be changed or canceled until at least 30 days written notice will have been given to the City.

The following represent the minimum required coverage limits:

Automobile Liability:	
Bodily Injury (each person)	\$250,000.00
Bodily Injury (each accident)	\$500,000.00
Property Damage	\$100,000.00
<u>General Liability (including contractual liability)</u>	
Bodily Injury	\$500,000.00
Property Damage	\$100,000.00

F. City Recognition

The Subrecipient shall insure recognition of the role of the City in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

G. Amendments

The City or Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement and are executed in writing, signed by a duly authorized representative of each organization. Such amendments shall not invalidate this Agreement, nor relieve or release the City or Subrecipient from its obligations under this Agreement.

The City may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both City and Subrecipient. Amendments to the Agreement that do not meet the definition of a Substantial Amendment as defined in the City of San Marcos Citizen's Participation Plan do not require approval by the City's governing body.

H. Suspension or Termination

In accordance with 24 CFR 85.43, the City may suspend or terminate this Agreement if the Subrecipient materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
2. Failure, for any reason, of the Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement;
3. Ineffective or improper use of funds provided under this Agreement; or
4. Submission by the Subrecipient to the City reports that are incorrect or incomplete in any material respect.

In accordance with 24 CFR 85.44, this Agreement may also be terminated for convenience by either the City or the Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the City determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the City may terminate the award in its entirety.

VII. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

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

2. Cost Principles

The Subrecipient shall administer its program in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit Organizations," or A-21, "Cost Principles for Educational Institutions," as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

B. Documentation and Record Keeping

The City of San Marcos is governed by the Texas Public Information Act, Chapter 552 of the Texas Government Code. This Agreement and all written information generated under this agreement may be subject to release under this Act.

1. Records to be Maintained

The Subrecipient shall maintain all records required by the Federal regulations specified in 24 CFR 570.506 that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
- c. Records required to determine the eligibility of activities;
- d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- f. Demographic data for applicants and beneficiaries of these funds;
- g. Financial records as required by 24 CFR 570.502, and 24 CFR 84.21-28; and
- h. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

2. Retention

The Subrecipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of four (4) years. The retention period begins on the date of the closeout of the project and will end four (4) years from that date.

The retention period begins on the date of the submission of the City's annual performance and evaluation report to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

3. Client Data

- (a) The Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such

information shall be made available to City monitors or their designees for review upon request.

(b) Safeguarding Sensitive Information. The Subrecipient shall comply with The Privacy Act of 1974, 5 U.S.C. § 552a, The Freedom of Information Act 5 U.S.C. § 552, and Section 208 of The E-Government Act regarding the disclosure of information about clients. Compliance for CDBG-funded projects is also spelled out in 24 C.F.R. § 5.212.

- i. The collection, maintenance, use, and dissemination of SSN's, Employer Identification Numbers (EINs), any information derived from SSN's and EINs, and income information under this subpart shall be conducted, to the extent applicable, in compliance with the Privacy Act and all other provisions of Federal, State, and local law.
- ii. All assistance applicants shall be provided with a Privacy Act notice at the time of application.
- iii. All records, both electronic and paper copies, shall be maintained in systems that have the appropriate administrative, technical, and physical safeguards to protect the information, however current.

4. Disclosure

The Subrecipient understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the City's or Subrecipient's responsibilities with respect to services provided under this contract, is prohibited unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

5. Close-outs

The Subrecipient's obligation to the City shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the City), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Subrecipient has control over CDBG funds, including program income.

6. Audits & Inspections

All Subrecipient records with respect to any matters covered by this Agreement shall be made available to the City, grantor agency, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within 30 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments.

The Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current City policy concerning subrecipient audits and OMB Circular A- 133.

- A. Subrecipients that expend \$500,000 (Increased to \$750,000 as of January 1, 2015 as per 2 CFR 200.110(b)) or more in total Federal financial assistance in a year must obtain an independent audit in accordance with the Single Audit Act of 1984 and OMB Circular A-133 as referenced at 24 CFR 84.26 and 85.26. The computation of the total of such assistance includes all Federal funds received by the entire entity, and not just the department or division receiving the CDBG funding. For purposes of determining the amount of Federal assistance expended, all Federal assistance shall be considered, including that which is received directly from a Federal agency, or passed through a state or local government, or through non-profit organizations, or any combination thereof.

- B. Subrecipient will furnish the City with a balance sheet and income statement (financial statement) prepared by a Certified Public Accountant ("CPA") for its activities during the term of the Agreement at the Subrecipient's expense. Subrecipient will provide a written copy of the financial statement to the City within 90 days nine (9) months from the date of Subrecipient's fiscal year end and not more than 30 days after the Subrecipient's receipt of the financial statement. Financial Statements required under the terms of this agreement will consist of:
 - a. CPA preparation of financial records is not required if the Subrecipient has total assets of \$15,000 or less in value;
 - b. A compiled financial statement is required if Subrecipient has total assets greater than \$15,000 and less than or equal to \$100,000 in value.
 - c. A reviewed financial statement is required if Subrecipient has total assets greater than \$100,000 and less than or equal to \$200,000 in value.
 - d. An audited financial statement is required if Subrecipient has total assets of more than \$200,000 in value. (In an "Audited" statement a CPA provides an in-depth study of the records, organizes them into a statement, and issues an opinion to their validity.)
 - e. For the purposes of this agreement, the term "total assets" is defined to mean the total amount of liquid assets that is documented to be available to the Subrecipient at the time the funding is approved.

C. Reporting and Payment Procedures

1. Program Income

The Subrecipient shall report all program income (as defined at 24 CFR 570.500(a)) generated by activities carried out with CDBG funds made available under this contract in the form, content, and frequency as required by the City.

The use of program income by the Subrecipient shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, the Subrecipient may use such income during the contract period for activities permitted under this contract and shall reduce requests for additional funds by the amount of any such program income balances on hand. All unexpended program income shall be returned to the City at the

end of the contract period. Any interest earned on cash advances from the U.S. Treasury and from funds held in a revolving fund account is not program income and shall be remitted promptly to the City.

2. Indirect Costs

If indirect costs are charged, the Subrecipient will develop an indirect cost allocation plan for determining the appropriate Subrecipient's share of administrative costs and shall submit such plan to the City for approval, in a form specified by the City.

3. Payment Procedures

The City will pay to the Subrecipient funds available under this Agreement based upon information submitted by the Subrecipient and consistent with any approved budget and City policy concerning payments. With the exception of certain limited advances, made with pre-approval by the City, payments will be made for eligible expenses actually incurred by the Subrecipient, and not to exceed actual cash requirements. Payments will be adjusted by the City in accordance with advance fund and program income balances available in Subrecipient accounts. The City reserves the right to withhold payment of any disbursement until the City has reviewed and approved payment requests and all supporting documentation has been supplied by the subrecipient. In addition, the City reserves the right to liquidate funds available under this contract for costs incurred by the City on behalf of the Subrecipient.

4. Progress Reports

The Subrecipient shall submit regular Progress Reports to the City in the form, content, and frequency as required by the City.

D. Procurement

1. Compliance

The Subrecipient shall comply with current City policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the City upon termination of this Agreement.

2. OMB Standards

Unless specified otherwise within this agreement, the Subrecipient shall procure all materials, property, or services in accordance with the requirements of 24 CFR 84.40-48.

3. Contractor Eligibility

The Subrecipient must ensure that awards are not made to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension" (24 CFR 85.35). Subrecipient will have each contractor and subcontractor complete a contractor eligibility form in a format that is provided or approved by the City. This form will provide the information necessary to verify contractor eligibility.

E. Use and Reversion of Assets

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR Part 84 and 24 CFR 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:

1. The Subrecipient shall transfer to the City any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.
2. Real property under the Subrecipient's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of \$25,000 shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 until five (5) years after expiration of this Agreement [or such longer period of time as the City deems appropriate]. If the Subrecipient fails to use CDBG- assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, the Subrecipient shall pay the City an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute program income to the City. The Subrecipient may retain real property acquired or improved under this Agreement after the expiration of the five-year period [or such longer period of time as the City deems appropriate].
3. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by the Subrecipient for activities under this Agreement shall be
(a) transferred to the City for the CDBG program or (b) retained after compensating the City [an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment].

F. DUNS Number and GGR SAM Registration

Subrecipient will comply with the Dun and Bradstreet Data Universal Numbering System (DUNS), the Central Contractor Registration (CCR) database, and the Federal Funding Accountability and Transparency Act, including Appendix A to Part 25 of the *Financial Assistance Use of Universal Identifier and Contractor Registration, as codified at 2 CFR Part 25, and Appendix A to Part 170 of the Requirements for Federal Funding Accountability and Transparency Act Implementation, as codified at 2 CFR Part 170.*

Subrecipient must have or obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) number that identifies the organization. Subrecipient must submit evidence of current registration in the federal System for Award Management (SAM) within 30 days of execution of this Subrecipient Agreement.

VIII. RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT

The Subrecipient agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at

49 CFR Part 24 and 24 CFR 570.606(b); (b) the requirements of 24 CFR 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan under section 104(d) of the HCD Act; and (c) the requirements in 24 CFR 570.606(d) governing optional relocation policies. [The City may preempt the optional policies.] The Subrecipient shall provide relocation assistance to displaced persons as defined by 24 CFR 570.606(b)(2) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted project. The Subrecipient also agrees to comply with applicable City ordinances, resolutions and policies concerning the displacement of persons from their residences.

X. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

The Subrecipient agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063 as amended by Executive Order 12259, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

2. Nondiscrimination

The Subrecipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

13. Land Covenants

This contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this contract, the Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the City and the United States are beneficiaries of and entitled to enforce such covenants. The Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

4. Section 504

The Subrecipient agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The City shall provide the Subrecipient with any guidelines

necessary for compliance with that portion of the regulations in force during the term of this Agreement.

5. The Architectural Barriers Act of 1968:

The Subrecipient agrees to comply with all Federal regulations issued pursuant to compliance with the Architectural Barriers Act of 1968 (ABA) (42 USC 4151-4157) which requires that certain buildings financed with Federal funds must be designed, constructed, or altered in accordance with standards that ensure accessibility for persons with physical disabilities. The ABA covers any building or facility financed in whole or in part with Federal funds, except privately owned residential structures. Covered buildings and facilities designed, constructed, or altered with CDBG funds must comply with the Uniform Federal Accessibility Standards.

B. Affirmative Action

1. Women- and Minority-Owned Businesses (W/MBE)

The Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish- heritage Americans, Asian-Americans, and American Indians. The Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

2. Access to Records

The Subrecipient shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the City, **HUD** or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

3. Notifications

The Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

5. Subcontract Provisions

The Subrecipient will include the provisions of Paragraphs X.A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subrecipients or subcontractors.

C. Employment Restrictions

1. Political Activity

The Subrecipient is prohibited from using CDBG funds to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities.

2. Labor Standards

The Subrecipient agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement.

The Subrecipient agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 *et seq.*) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The Subrecipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the City for review upon request.

The Subrecipient agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by the City pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Subrecipient of its obligation, if any, to require payment of the higher wage. The Subrecipient shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

3. "Section 3" Clause

Provisions are applicable to covered projects for which the amount of HUD assistance exceeds \$200,000 and the contract or subcontract exceeds \$100,000.

a. Compliance

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and

all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the Federal financial assistance provided under this contract and binding upon the City, the Subrecipient and any of the Subrecipient's subrecipients and subcontractors. Failure to fulfill these requirements shall subject the City, the Subrecipient and any of the Subrecipient's subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The Subrecipient certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Subrecipient further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

The Subrecipient further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The Subrecipient certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

b. Notifications

The Subrecipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or

understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

c. Subcontracts

The Subrecipient will include this Section 3 clause in every covered subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The Subrecipient will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

D. Conduct

1. Assignability

The Subrecipient shall not assign or transfer any interest in this Agreement without the prior written consent of the City thereto; provided, however, that claims for money due or to become due to the Subrecipient from the City under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City.

2. Subcontracts

a. Approvals

The Subrecipient shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the City prior to the execution of such agreement.

b. Monitoring

The Subrecipient will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

c. Content

The Subrecipient shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

d. Selection Process

The Subrecipient shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition

basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the City along with documentation concerning the selection process.

3. Hatch Act

The Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

4. Conflict of Interest

The Subrecipient agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include (but are not limited to) the following:

- a. The Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.
- b. No employee, officer or agent of the Subrecipient shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
- c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the City, the Subrecipient, or any designated public agency.

5. Lobbying

The Subrecipient hereby certifies that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into 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, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
- c. It will require that the language of paragraph (d) 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:
- d. Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

6. Copyright

If this contract results in any copyrightable material or inventions, the City and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

7. Religious Activities

The Subrecipient agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200U), such as worship, religious instruction, or proselytization. The acquisition, construction, or rehabilitation of structures used for inherently religious activities is not allowable under this program.

XI. ENVIRONMENTAL CONDITIONS

No funds may be committed to an activity or project before the completion of the Environmental Review process and approval of the Environmental Review by the City. Subrecipient will coordinate with the City to ensure all Environmental Review requirements have been completed prior to committing funds. Further, all projects undertaken must comply with all environmental conditions noted in the specific project's Environmental Review Record.

A. Air and Water

The Subrecipient agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

- Clean Air Act, 42 U.S.C. , 7401, *et seq.*;
- Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, *et seq.*, as

amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued hereunder;

- Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

B. Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Subrecipient shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

C. Lead-Based Paint

The Subrecipient agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

D. Historic Preservation

The Subrecipient agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement.

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

XII. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

XIII. SECTION HEADINGS AND SUBHEADINGS

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

XIV. WAIVER

The City's failure to act with respect to a breach by the Subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the City to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

XV. VENUE AND LEGAL REMEDIES

This Agreement is governed by the laws of the State of Texas. Exclusive venue for any dispute arising under this Agreement is in Hays County, Texas. In addition to any other remedy available by law, it is specifically provided that either party may enforce this Agreement by specific performance in a court of competent jurisdiction.

The Subrecipient will notify the City whenever a problem arises that may lead to legal action or claim against the Subrecipient. The Subrecipient agrees to furnish to the City any information with respect to such action or claim.

XVI. ENTIRE AGREEMENT

This agreement constitutes the entire agreement between the City and the Subrecipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the City and the Subrecipient with respect to this Agreement.

XVII. APPLICABILITY TO FR-5938-N-01

Revision Notice 07/31/2016: This policy was reviewed and edited for compliance with CDBG-DR requirements for FR-5938-N-01. In instances where the existing City of San Marcos policy exceeded the standards outlined in the Federal Register, the City retained the more stringent existing policy standards.

[NOTE: For the above sections, if the Subrecipient is a governmental or quasi-governmental agency, the applicable sections of 24 CFR Part 85, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," and OMB Circular A-87 would apply.]

IN WITNESS WHEREOF, the Parties have executed this contract as of the date first written above. City of

San Marcos

BY: _____
[City Manager's Name]
City Manager

[Subrecipient Name]

BY: _____
[Authorized Signatory Name and Title]

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

City Attorney