

**Federal Awarding Agency:** HUD  
**Pass-Through Entity:** City of Sunnyvale  
**Federal Award Amount** (to Sunnyvale):  
\$1,037,051 (2016);  
\$1,004,607 (2017)

**Federal Award Date:** 07/01/16 and 07/01/17  
**FAIN:** B-16/17-MC060023  
**Federal Sub-award ID #s:** 1617-832040  
And 1718-832040  
**DUNS #:** 080156389  
**CFDA:** 14.218  
**CDBG Funds:** \$883,000

**GRANT AGREEMENT WITH MIDPEN HOUSING CORP.  
FOR PERSIAN DRIVE SIDEWALK PROJECT  
(CDBG AND WT FUNDS)**

THIS Grant Agreement ("AGREEMENT") dated as of December \_\_, 2017, is by and between the CITY OF SUNNYVALE, a municipal corporation (hereinafter "CITY"), and MidPen Housing Corp., a non-profit corporation, (hereinafter "GRANTEE"), each of which is referred to herein individually as "Party" and jointly as "Parties."

**RECITALS**

WHEREAS, CITY hereby awards to GRANTEE a sub-award of **\$883,000** in FY 2016 and FY 2017 Community Development Block Grant (CDBG) and CDBG Program Income funds (the "CDBG Funds"), consistent with the CITY'S 2016 and 2017 Action Plans, for design and construction of a new public sidewalk, drainage and related public improvements along the south side of Persian Drive between Morse and Borregas Avenues in Sunnyvale, CA ("PROJECT") where no sidewalk currently exists. The PROJECT qualifies for CDBG funds under the Low-Mod Area Benefit criteria as a public infrastructure improvement. The project will improve pedestrian safety in a CDBG-eligible "low-mod" census tract; and

WHEREAS, CITY will provide an additional **\$90,000** in **non-federal** wastewater treatment funds ("WT" or the "CITY Funds") for storm-water filtration landscaping and related improvements (a "Bioswale") to be included in the PROJECT, for a **TOTAL GRANT AMOUNT OF \$973,000** (the "GRANT"); and

WHEREAS, this AGREEMENT sets forth the terms for expenditure of the GRANT, including a detailed project description, scope of work, budget, timeline, and related requirements for completion of the PROJECT, including various conditions related to wage compliance and other federal requirements contained herein; and

WHEREAS GRANTEE shall contract with a qualified general construction contractor to complete the PROJECT;

WHEREAS, CITY completed its environmental review of the PROJECT pursuant to the National Environmental Policy Act (24 U.S.C. Section 4321 et seq.) and its implementing regulations ("NEPA"), consisting of an Environmental Assessment; and issued a Finding of No Significant Impact (FONSI) for the PROJECT on April 25, 2016 pursuant to 24 CFR 58.40(g)(1). The CITY relies on this FONSI as evidence of its compliance with NEPA.

WHEREAS, CITY completed its environmental review of the PROJECT pursuant to the California Environmental Quality Act ("CEQA"), consisting of an Initial Study and Mitigated Negative Declaration filed on January 26, 2016. The CITY relies on the Negative Declaration as evidence of its compliance with CEQA.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES, REPRESENTATIONS AND WARRANTIES SET FORTH HEREIN AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT, SUFFICIENCY AND EXCHANGE OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES, INTENDING TO BE LEGALLY BOUND, AGREE AS FOLLOWS:

## **SECTION 1: Scope of Work and Reporting**

1.1 Scope of Work. GRANTEE agrees to cause the PROJECT scope of work as described in Exhibit A, attached to this Agreement and incorporated herein, to be completed in exchange for the GRANT as set forth in section 2.1. GRANTEE shall procure and administer contracts for any required professional services and/or other contracts needed to complete the PROJECT. GRANTEE will perform project management services and oversee completion of the PROJECT. GRANTEE may engage contractor(s) to perform work necessary to complete the PROJECT.

1.2 Required Approvals; Compliance with Prevailing Wage Laws. Prior to commencement of the PROJECT, GRANTEE or its designee (e.g., consultant/independent contractor) will obtain all applicable local, state and federal approvals and permits for the PROJECT. In addition, the PROJECT shall comply with all applicable federal, state and local laws and regulations, including, but not limited to, prevailing wage requirements.

1.3 Access to Records and Record Retention. At all reasonable times, GRANTEE will permit the CITY access to all reports, designs, drawings, plans, specifications, schedules and other materials prepared, or in the process of being prepared, for the PROJECT by GRANTEE or any contractor or consultant of GRANTEE. GRANTEE will provide copies of any documents described in this Section to the CITY upon request. GRANTEE will retain all records pertaining to the PROJECT for at least five years after completion of the PROJECT.

## **SECTION 2: Funding and Payment**

2.1 Funding Commitment. The CITY agrees to pay GRANTEE for the actual cost for completion of the PROJECT, not to exceed the total amount of GRANT as defined above. The PROJECT shall be completed consistent with the PROJECT budget as shown in Exhibit A herein. Any changes greater than ten percent of the budget for any line item or cost category as shown therein shall require written pre-approval by the City Manager or his/her designee.

### **2.2 Use of Funds.**

a) GRANTEE agrees that it shall use the GRANT funds only for the completion of the PROJECT. GRANTEE shall document, in accordance with generally-accepted accounting principles, the costs incurred to complete the PROJECT. GRANTEE shall not use the GRANT to pay for costs unrelated to the PROJECT.

b) If the CITY determines that GRANTEE has used GRANT funds and/or requested payment for costs other than eligible PROJECT costs, CITY will notify GRANTEE of its determination. GRANTEE shall, within 30 days of notification of the CITY's determination, either (i) repay such funds to the CITY, or (ii) provide further clarification of the expenses in question and why they were necessary for the PROJECT, to which the CITY will respond within 30 days of receipt. The CITY's response will be final, unless otherwise stated in the response, and

GRANTEE shall repay any funds determined to have been used other than for the approved PROJECT within 30 days.

2.3 Payment of Funds. Payments to GRANTEE shall be made within thirty (30) days of GRANTEE's submittal of an invoice to CITY for eligible PROJECT expenses, consistent with the PROJECT budget and executed contracts for the work, and provided there are no questioned costs. GRANTEE invoices shall provide a detailed accounting of the costs incurred for the PROJECT, copies of relevant invoices from contractor(s) or sub-contractor(s), and a cover letter signed by GRANTEE requesting GRANT funds to pay contractor(s) for and/or reimburse GRANTEE for the costs incurred.

### **SECTION 3: Term**

3.1 Term. The term of this Agreement will commence on the Execution Date and conclude upon the CITY's final payment of the GRANT to GRANTEE upon the successful completion of the PROJECT.

3.2 Time of Performance. The PROJECT must be completed by the target completion date shown in Exhibit A, Project Timeline. In the event of any unanticipated delay requiring an extension of the completion date, GRANTEE shall notify CITY in writing to request an extension as soon as the need for such is known to GRANTEE. Such request shall not be unreasonably denied by CITY as long as GRANTEE remains in good standing on all other performance targets and grant conditions described herein, and the delay was caused by forces beyond GRANTEE's control.

### **SECTION 4: Insurance**

4.1 Insurance. For the purposes of this Insurance section, "Entity" is defined as any entity designing, approving designs and/or performing the PROJECT funded by this Agreement. Entities may include GRANTEE, a contractor of GRANTEE, another body on behalf of which GRANTEE submitted its funding application, and/or a contractor of such other body.

All Entities will provide the appropriate insurance covering the work being performed. The insurance requirements specified in this section will cover each Entity's own liability and any liability arising out of work or services of Entity subcontractors, consultants, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations (hereinafter collectively referred to as "Agents") working on the PROJECT.

a) Minimum Types and Scope of Insurance. Each Entity is required to procure and maintain at its sole cost and expense insurance subject to the requirements set forth below. Such insurance will remain in full force and effect throughout performance of the PROJECT. All policies will be issued by insurers acceptable to the CITY (generally with a Best's Rating of A-10 or better). Each Entity is also required to ensure that Agents who perform work pursuant to this Agreement maintain insurance coverages as set forth herein. Entities may self-insure against the risks associated with the PROJECT, but in such case, waive subrogation in favor of the CITY respecting any and all claims that may arise.

i. Workers' Compensation and Employer's Liability Insurance. Worker's Compensation coverage must meet statutory limits and Employer's Liability Insurance must have minimum limits of One Million Dollars. Insurance must include a Waiver of Subrogation in favor of the CITY.

ii. Commercial General Liability Insurance. The limit for Commercial General Liability Insurance in each contract and subcontract cannot be less than Two Million Dollars. Commercial General Liability Insurance must be primary to any other insurance, include coverage for hired and non-owned autos, name the CITY as an Additional Insured, include a Separation of Interests endorsement and include a Waiver of Subrogation in favor of the CITY.

iii. Business Automobile Liability Insurance. The limit for Business Automobile Liability Insurance in each contract and subcontract cannot be less than One Million Dollars. Insurance must cover all owned, non-owned and hired autos, and include a Waiver of Subrogation in favor of the CITY. GRANTEE shall not be required to carry this insurance provided it owns no vehicles.

iv. Property Insurance. Property Insurance must cover an Entity's and/or Agent's own equipment as well as any materials to be installed. Property Insurance must include a Waiver of Subrogation in favor of the CITY.

v. Professional Liability Insurance. If deemed appropriate by an Entity in consideration of the work required for the PROJECT, insurance should cover each Entity's and any Agent's professional work on the PROJECT. The limit for Professional Liability Insurance in each appropriate contract and subcontract should not be less than One Million Dollars. GRANTEE shall not be required to carry this insurance, but shall require it of all parties performing professional services.

vi. Contractors' Pollution Liability Insurance. If deemed appropriate by an Entity in consideration of the work required for the PROJECT, insurance should cover pollution conditions that arise as a result of the work or services performed by or on the behalf of such Entity. The limit for Contractors' Pollution Liability Insurance in each appropriate contract and subcontract should not be less than One Million Dollars. Such insurance if obtained must name the CITY as an Additional Insured and include a Waiver of Subrogation in favor of the CITY.

b) Excess or Umbrella Coverage. GRANTEE and/or any other Entity may opt to procure excess or umbrella coverage to meet the above requirements, but in such case, these policies must also satisfy all specified endorsements and stipulations for the underlying coverages and include provisions that the policy holder's insurance is to be primary without any right of contribution from the CITY.

c) Deductibles and Retentions. GRANTEE must ensure that deductibles or retentions on any of the above insurance policies are paid without right of contribution from the CITY. Deductible and retention provisions cannot contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the named insured is unacceptable. In the event that any policy contains a deductible or self-insured retention, and in the event that the CITY seeks coverage under such policy as an additional insured, GRANTEE will ensure that the policy holder satisfies such deductible to the extent of loss covered by such policy for a lawsuit arising from or connected with any alleged act or omission of the Entity or Agents, even if neither the Entity nor Agents are named defendants in the lawsuit.

d) Claims Made Coverage. If any insurance specified above is provided on a claim-made basis, then in addition to coverage requirements above, such policy must provide that:

i. Policy retroactive date coincides with or precedes the Entity's start of work (including subsequent policies purchased as renewals or replacements).

ii. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

e) Failure to Procure Adequate Insurance. Failure by any Entity to procure sufficient insurance to financially support Section 5.1, Indemnity by GRANTEE, under this Agreement does not excuse GRANTEE from meeting all obligations of Section 5.1 and the remainder of this Agreement, generally. Prior to beginning work under this Agreement, GRANTEE must obtain, and produce upon request of the CITY, satisfactory evidence of compliance with the insurance requirements of this section.

### **SECTION 5: Miscellaneous**

5.1 Notices. All notices required or permitted to be given under this Agreement must be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, or by personal delivery or overnight courier to the appropriate address indicated below or at such other place(s) that either Party may designate in written notice to the other. Notices are deemed received upon delivery if personally served, one day after mailing if delivered via overnight courier, or two days after mailing if mailed as provided above.

CITY: Suzanne Isé, Housing Officer  
City of Sunnyvale Housing Division  
P.O. Box 3707  
Sunnyvale, CA 94088-3707

GRANTEE: Matthew O. Franklin, President  
MidPen Housing Corp.  
303 Vintage Park Drive, Suite 250  
Foster City, CA 94404

5.2 No Waiver. No waiver of any default or breach of any covenant of this Agreement by either Party will be implied from any omission by either Party to take action on account of such default if such default persists or is repeated. Express waivers are limited in scope and duration to their express provisions. Consent to one action does not imply consent to any future action.

5.3 Assignment. Except as set forth in Section 4.1, Parties are prohibited from assigning, transferring or otherwise substituting their interests or obligations under this Agreement without the written consent of all other Parties, provided however, GRANTEE shall have the right to assign this Agreement to an affiliated entity of GRANTEE that is the owner of the Property, without the prior approval or consent of the CITY.

5.4 Governing Law and Venue. This Agreement is governed by the laws of the State of California as applied to contracts that are made and performed entirely in California and venue shall be with the Superior Court of Santa Clara County.

5.5 Compliance with Laws. In performance of this Agreement, the Parties must comply with all applicable Federal, State and local laws, regulations and ordinances; including, but not limited to prevailing wage requirements, and the CDBG Assurances and Requirements, provided in Exhibit C.

5.6 Modifications. This Agreement may only be modified in writing, executed by both Parties.

5.7 Attorneys' Fees. In the event that legal proceedings are instituted to enforce any provision of this Agreement, the prevailing Party in said proceedings is entitled to its costs, including reasonable attorneys' fees.

5.8 Relationship of the Parties. It is understood that this is an Agreement by and between Independent Contractors and does not create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship other than that of Independent Contractor.

5.9 Ownership of Work. All reports, designs, drawings, plans, specifications, schedules, studies, memoranda, and other documents assembled for or prepared by or for, in the process of being assembled or prepared by or for, or furnished to GRANTEE under this Agreement are the sole property of the CITY, and will not be destroyed without the prior written consent of the CITY. The CITY is entitled to copies and access to these materials during the progress of the PROJECT and upon completion or termination of the PROJECT or this Agreement. GRANTEE may retain a copy of all material produced under this Agreement for its use in its general activities. This Section does not preclude additional shared ownership of work with other entities under contract with GRANTEE for funding of the PROJECT.

5.10 Non-discrimination. In the performance of the PROJECT, GRANTEE and any contractors performing services on behalf of GRANTEE will not discriminate or permit discrimination against any person or group of persons on the basis of race, color, religion, national origin or ancestry, age, sex, sexual orientation, marital status, pregnancy, childbirth or related conditions, medical condition, mental or physical disability or veteran's status, or in any manner prohibited by federal, state or local laws.

5.11 Warranty of Authority to Execute Agreement. Each Party to this Agreement represents and warrants that each person whose signature appears hereon is authorized and has the full authority to execute this Agreement on behalf of the entity that is a Party to this Agreement.

5.12 Severability. If any portion of this Agreement, or the application thereof is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining portions of this Agreement, or the application thereof, will remain in full force and effect.

5.13 Counterparts. This Agreement may be executed in counterparts.

5.14 Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to its subject matter and supersedes any prior or contemporaneous written or oral agreement between the Parties on the same subject.

IN WITNESS WHEREOF, CITY and GRANTEE have executed this Agreement as of the date first set forth above.

**CITY:**

City of Sunnyvale, a  
municipal corporation

**GRANTEE:**

MidPen Housing Corp.

\_\_\_\_\_  
By: Kent Steffens, Interim City Manager

\_\_\_\_\_  
By: Matthew O. Franklin, President

APPROVED AS TO FORM:

\_\_\_\_\_  
By: Robert Boco, Senior Assist. City Attorney

- Exhibit A: Project Description, Scope of Work, Budget and Timeline
- Exhibit B: Location Map
- Exhibit C: CDBG Assurances and Requirements
- Exhibit D: City Requirements

## EXHIBIT A

### PROJECT DESCRIPTION, SCOPE OF WORK, BUDGET and TIMELINE

**PROJECT DESCRIPTION:**

Construct approximately 1,800 linear feet of new sidewalk and approximately 600 square feet of bio-retention landscaping (“Bioswale”) within the City right-of-way (ROW) on the south side of Persian Drive, between Borregas and Morse Avenues, in Sunnyvale, CA, consistent with applicable City specifications and standards. Complete minor grading as needed to construct sidewalk; adjust existing light poles and other existing utility fixtures as needed to match finished grade. Design shall address possible variation in ROW width in front of sole single-family property adjacent to project site at mid-block. Submit PROJECT plans and designs to CITY Public Works Department (DPW) for approval and obtain required DPW permits prior to beginning work.

**SCOPE OF WORK:**

Provide all necessary surveying, design and engineering services, project management, procurement, utility coordination and relocation if necessary, grading, construction and landscaping services needed to complete the PROJECT. Comply with state and federal prevailing wages for public works projects (Davis Bacon and CA prevailing wage laws) for covered workers and comply with other federal requirements listed in Exhibits C and D to this Agreement. Submit project plans and specifications to DPW and Environmental Services Department (ESD) staff for review and approval prior to signing construction contracts.

**PROJECT BUDGET**

Cost Category/Line Item	Estimated Cost	Subtotal
<b>Design &amp; Soft Costs</b>		<b>\$ 80,630</b>
Surveying	\$ 15,000	
Engineering Services, Conceptual Design	\$ 20,000	
Coordination with Utilities, etc.	\$ 7,000	
Construction Documents	\$ 31,300	
<b>Total Soft Costs</b>	<b>\$ 73,300</b>	
<i>Soft Costs Contingency (10%)</i>	<i>\$ 7,330</i>	
<b>Construction</b>		<b>\$ 892,370</b>
Construction Hard Costs	\$ 564,000	
Bioswale	\$ 80,000	
Grading, Utility Fixtures Relocation to Grade	\$ 15,500	
Construction Management	\$ 35,000	
<i>Contingency (30% of Hard Costs)</i>	<i>\$ 197,870</i>	
<b>Total Project Budget</b>		<b>\$ 973,000</b>

The above budget will be refined following the receipt of bids, with prior written approval from the City, so long as the total Project Budget is not exceeded. Contingencies shall not be used without prior authorization from the City (DPW Projects Engineering).

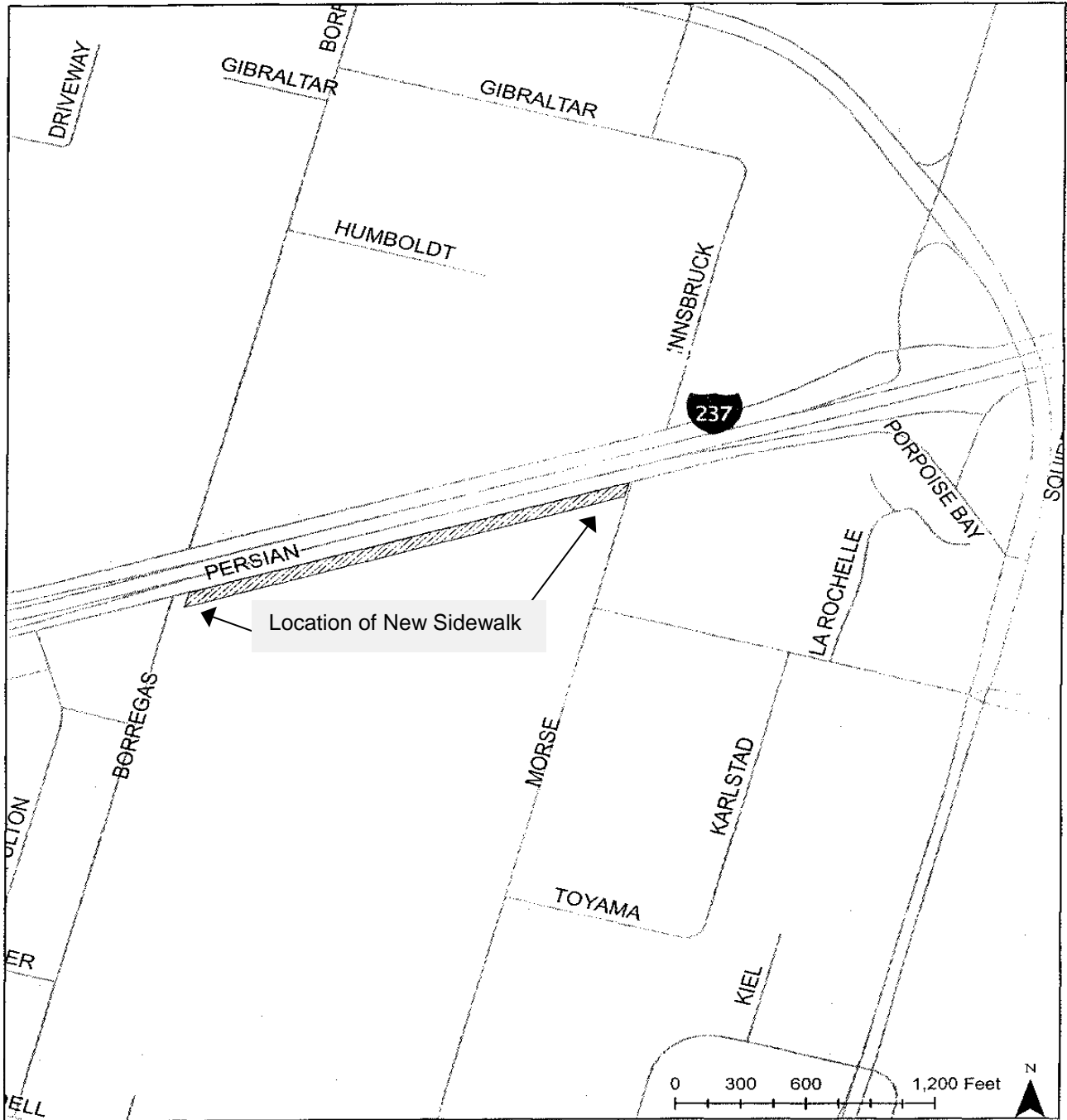


**TIMELINE:**

- Complete survey work, design, engineering, and plan submittal by March 30, 2018
- Submit invoices/reimbursement requests for costs incurred to date by March 30, 2018
- Complete PROJECT work and file notice of completion by August 2018
- Submit final draw for GRANT funds by September 2018

Timeline may be adjusted if necessary for unusual weather delays or other unexpected occurrences, with prior approval by the City.

### EXHIBIT B LOCATION MAP



## **EXHIBIT C CDBG ASSURANCES AND REQUIREMENTS**

### **I. ASSURANCES**

GRANTEE shall become familiar and comply with and cause its SUBGRANTEES, employees and subrecipients, if any, to comply with all of the following applicable federal, state, and local laws, ordinances, codes, and regulations. Failure of GRANTEE to understand law as described herein shall in no way relieve GRANTEE of its responsibility to adhere to same. GRANTEE assures and certifies to the CITY that:

- A. It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Act for fair and equitable treatment of persons displaced as a result of federal and federally-assisted programs.
- B. It will comply with the provisions of the Hatch Act which limit the political activity of employees.
- C. It will give the sponsoring agency (or the Comptroller General), through any authorized representatives, the access to and the right to examine all records, books, papers and documents related to the grant.
- D. It will comply with all requirements imposed by the federal sponsoring agency concerning special requirements of law, program requirements, and other administrative requirements.
- E. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of violating facilities and that it will notify the federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that facility to be used in the project is under consideration for listing by the EPA.
- F. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development (HUD) as an area having special flood Hazards.
- G. It will assist the grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966, as amended, (16 U.S.C. 470), Executive Order 11592, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469c-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effect (see 46 CFR Part 800.8) by any such properties, and by (b) complying with all requirements established by the federal grantor agency to avoid or mitigate adverse effects upon such properties.

- H. It will comply with Section 3 of the Housing and Community Development Act of 1968, as amended, in the provision of training, employment, and business opportunities.
- I. It will comply with provisions of Executive Order 11246, as amended, on equal employment opportunities and affirmative action relative to employees and applicants and non-exempt contracts and subcontracts.
- J. It will comply with 24 CFR Part 35 of the HUD regulations prohibiting the use of lead-based paint in the construction or rehabilitation of residential structures.
- K. It will comply with the requirements of the Clean Air Act, as amended, and the Federal Water Pollution Control Act.
- L. It will comply with the Davis-Bacon Federal Labor Standards provision with respect to all construction contracts in excess of \$2,000.
- M. It will comply with the non-discrimination requirements under Title VI of the Civil Rights Act of 1964 with respect to sale, lease or other transfer of land acquired, cleared, or improved with grant assistance.
  - a. It will comply with 24 CFR Part 85 of the HUD regulations known as the Common Rule.
  - b. It will comply with the "Program Income" requirements as set forth in 570.504(c). At the end of the program year, the City may require remittance of all or part of any program income balances held by the Grantee.
    - i. Where program income is to be retained by the Grantee, the Grantee shall apply program income towards all activities as set forth in this Agreement. All provisions of this Agreement shall apply to these activities. Transfers of CDBG grant funds by the City to the Grantee shall be adjusted accordingly as set forth in 570.504(b)(2)(i)(ii).
    - ii. Any program income on hand when the Agreement expires, or received after the Agreement's expiration, shall be paid to the City as required by 570.503(b)(8).
- N. It will comply with "Close-Out" requirements. The Sub-recipient's obligation to the City shall not end until all closeout requirements are completed. Activities during this close-out period shall include, but are not limited to, making final payments, disposing of CDBG Program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and receivable accounts to the City), and determining the custodianship of records.

## II. REQUIREMENTS

- A. Subrecipients shall comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards governed by 2 CFR Part 200 as follows:

- Subpart A Acronyms and Definitions
- Subpart B General Provisions
- Subpart C Pre-Federal Award requirements and contents of Federal Awards
- Subpart D Post Award requirements, subrecipient monitoring and management
- Subpart E Cost principles

B. GRANTEE shall comply with all applicable requirements of a sub recipient under 24 CFR Part 570 as follows:

Sections	570.503	Agreements with subrecipients
	570.504	Program Income
	570.507	Reports. Records must be retained for at least four years from closeout of the activity.

C. Subrecipients shall comply with the requirements of Subpart K of the Community Development Block Grant Program Final Rule, "Other Program Requirements" found in 24 CFR Part 570 as follows:

Sections	570.200	General Policies
	570.600	General
	570.601	Public Law 88352 and Public Law 90284; affirmatively furthering fair housing; and Executive Order 11063
	570.602	Section 109 of the Act
	570.603	Labor standards
	570.604	Environmental standards
	570.605	National Flood Insurance Program
	570.606	Displacement, relocation, acquisition, and replacement of housing
	570.607	Employment and contracting opportunities
	570.608	Lead-based paint
	570.609	Use of debarred, suspended, or ineligible contractors or subrecipients
	570.610	Uniform administrative requirements and cost principles
	570.611	Conflict of interest
	570.612	Executive Order 12372

## **Exhibit D**

### City Requirements

#### PROJECT COMPLETION

CITY requires as a Condition of Grant, and GRANTEE agrees to complete the design, permitting, construction, and management of the Project, also referred to herein as the "Improvements".

#### COST

GRANTEE and CITY have agreed the total cost of the Improvements to be \$973,000.00, which includes the following: (1) direct construction costs, (2) related general contractor's general conditions, overhead and general contractor's other indirect costs thereof (with respect to which GRANTEE shall provide City with adequate supporting documentation for City's confirmation), (3) the general contractor's fee, (4) design, surveying, permitting, testing, inspecting, engineering and other indirect costs at GRANTEE's actual costs incurred (i.e., no GRANTEE markup), (5) any other third party costs directly related to the Improvements reasonably incurred by GRANTEE, and (6) Hard and Soft Cost Contingencies. This cost breakdown (Project Budget) is included as Exhibit "A" to this Agreement.

#### GRANTEE RESPONSIBILITIES

1. *Design and Construction.* GRANTEE shall prepare the design plans and specifications of the Improvements and CITY shall approve the plans and specifications with necessary modifications, thereafter referred to as the "Approved Plans."
2. *Permits.* GRANTEE shall obtain all necessary permits required for the Improvements.
3. *Compliance with Law and Indemnification for Prevailing Wages.* GRANTEE shall use its own contract forms to award the contract for the construction of the Improvements, and shall comply with all laws, ordinances and regulations applicable to the work (including but not limited to, all applicable requirements of the California Labor Code). The GRANTEE shall indemnify, defend and hold harmless the CITY, its employees, officers and agents, from any and all liability, damages, claims or causes of action brought for the payment of California and/or Davis Bacon prevailing wages on all work associated with the Improvements.
4. *City as Additional Insured and Obligee.* GRANTEE's Contractor and all subcontractor(s) (collectively, "Contractors") shall name the City as an additional insured on their insurance policies for the Project, and City shall be named as an additional obligee under the warranty bonds for the Project.
5. *Assignment and Assumption of Contracts and Warranties.* Upon completion of the Project, GRANTEE will assign and City will assume all rights and warranties of the contracts entered into by GRANTEE with its Contractors for design, installation, construction, and any other work related to completion of the Project. The assignment and assumption shall not include any of GRANTEE's obligations under such contracts. GRANTEE will obtain acknowledgements from its Contractors that the obligations under those contracts have been satisfied prior to the assignment and assumption.

6. *Assignment/Acceptance/Release of Liabilities and Responsibilities for Project.* Upon completion of the Project, as evidenced by a Notice of Completion and release of all workman's liens from the Project, GRANTEE will assign and City will accept ownership of the Project and the improvements and work included in and part of the Project. By this assignment and acceptance, the City shall agree on behalf of itself and all successors and assigns to release MidPen and its related and affiliated entities and their insurers (but not its Contractors performing the work comprising the Project, or such Contractors' insurers or sureties) from all responsibility and liability associated with the Project.

GRANTEE's Contractors shall warrant to CITY for a period of one (1) year following the date of Final Acceptance of the Work, the quality and adequacy of all of the Work performed as herein described including, without limitation, all work performed and materials supplied by GRANTEE's Contractors.

Neither final payment nor use of the Work performed by the GRANTEE or its Contractor(s) shall constitute an acceptance of any work not done in accordance with this warranty or relieve GRANTEE's Contractors of liability in respect to any express warranties or responsibilities for faulty materials or workmanship. GRANTEE's Contractors shall remedy any defects in the Work and pay for any damage resulting therefrom which shall appear within one (1) year of Final Acceptance of the Work.

#### CITY RESPONSIBILITIES

1. *Review and Approval of Improvement Plans.* CITY shall work with GRANTEE to promptly review and approve the design plans and specifications, including all necessary modifications, for the Improvements prepared by the GRANTEE.
2. *Acceptance of Improvements.* CITY agrees that it shall, after CITY's inspector confirms that the Improvements have been completed in accordance with the Approved Plans, promptly accept such completed Improvements.
3. *Payment.* Upon City acceptance of the Improvements, CITY shall pay GRANTEE for the total costs of the Improvements in an amount not to exceed \$973,000.00, (net of contingencies provided on Project Budget, unless use of such contingencies was pre-approved by City in writing), upon GRANTEE submission of complete invoices showing actual costs for the Improvements. Progress payments may be made by CITY prior to completion of the entire Project, upon receipt of complete invoices from GRANTEE and following CITY inspection of the phase(s) of the work completed for which progress payment(s) may be sought.