

FIFTH AMENDMENT TO MANAGEMENT & LEASE AGREEMENT

This Fifth Amendment to Management and Lease Agreement (“Fifth Amendment”) is made as of ~~September 17~~, 2018, in San Francisco, California, by and between CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“City”), represented by the Mayor, acting by and through the Mayor's Office of Housing and Community Development (“MOHCD”), and MERCY MIDTOWN INC., a California nonprofit public benefit corporation (“Mercy”).

RECITALS

A. City and Mercy are parties to that certain Management and Lease Agreement dated as of January 31, 2014, as amended by an Amendment to Management and Lease Agreement dated as of May 1, 2014 (“First Amendment”); as further amended by a Second Amendment to Management & Lease Agreement dated as of March 27, 2015 (“Second Amendment”); as further amended by a Third Amendment to the Management & Lease Agreement dated as of November 17, 2016 (the “Third Amendment”); and as further amended by a Fourth Amendment to Management & Lease Agreement dated as of November 16, 2017 (the “Fourth Amendment”) together with the First Amendment, Second Amendment, Third Amendment and Fourth Amendment collectively, the “Lease”), pursuant to which Mercy leases and manages the Premises. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Lease.

B. In reviewing the Lease, the City has determined a number of Articles require amendment related to changes in the “Rent Modification Program.”

C. Pursuant to the Third Amendment and Fourth Amendment, the City provided \$8,670,000 of CDBG funds to Mercy for Changes approved by the City for certain health and safety improvements to the Site (“Phases I and II”). Mercy has completed Phases I and II, and upon further inspection, Mercy has determined that certain additional Changes to the Improvements are necessary for the health, safety, and benefit of the Site and the residents (“Phase III Changes), and the City has approved and has agreed to fund the Phase III Changes, subject to certain terms and conditions.

D. The parties now desire to enter into this Fifth Amendment to memorialize the administrative changes and set forth the scope of work for the Phase III Changes and the terms and conditions of their agreement in connection therewith and to otherwise amend the Lease as more particularly set forth below.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Mercy hereby agree as follows:

1. Amendments to Lease.

a. Definitions. Section 1.13 (Rental Credit Program) is hereby deleted and replaced with the following:

1.13 **Rent Modification Program** means the program to be established by MOHCD whereby rental charges for Existing Occupants will be set forth,

along with any applicable rent credit subsidy for individual Existing Occupants provided by the City.

Any reference in the Lease to the defined term "Rental Credit Program" is hereby replaced with the defined term "Rent Modification Program."

b. Section 5.06 (Rents; Rent Modification Program). Section 5.06 of the Lease is hereby amended as follows (additions in double underline and deletions in ~~strikethrough~~):

From the period commencing on the Agreement Date and ending on the date the Rental Modification Credit Program becomes effective, rents charged to each Existing Occupant shall not exceed the rent amount charged such occupant as of the Agreement Date. City shall provide Mercy with the Rental Modification Credit Program upon City's completion of the terms thereof. Upon completion of the income certifications for all Existing Occupants and completion of the Rental Modification Credit Program, Mercy shall charge rents at the rates set forth in the Rental Modification Credit Program; ~~provided, however, that for any Existing Occupant that refuses to complete an income certification, Mercy may charge such tenant a market rate rent.~~

c. Article 26 (Notices and Consents). Mercy's address set forth in Article 26 is hereby deleted and replaced with the following:

Mercy Midtown Inc.
1256 Market Street
San Francisco, CA 94102

2. Phase III Scope of Work. As required under Article 5.10 of the Lease, the City hereby approves the Changes in the amount of \$863,115, set forth in Exhibit A, attached hereto and by this reference made a part hereof (the "Phase III Scope of Work"). The Phase III Scope of Work shall be performed in compliance with this Fifth Amendment and the Phase III Budget, set forth in Exhibit B, attached hereto and by this reference made a part hereof.

3. Definitions. The following additional definitions shall apply to this Fourth Amendment:

- a. "Disbursement" means the disbursement of all or a portion of the Funding Amount by the City.
- b. "Expenditure Request" means a written request by Mercy for a Disbursement from the Funding Amount, which must certify that the costs covered by the Expenditure Request have been paid or incurred by Mercy.

4. Funding.

- a. The City is authorized under a contract with the United States Department of Housing and Urban Development ("HUD") pursuant to Title I of the Housing and Community Development Act of 1974 (42 U.S.C. §§ 5301 *et seq.*), to distribute

Community Development Block Grant ("CDBG") funds (the "Funds") for the specific and special purpose of increasing the housing stock in the City for low- and very low-income persons. The City agrees to provide to Mercy up to \$863,115 (the "Phase III Funding Amount") of CDBG funds, set forth in the Phase III Budget attached as Exhibit B, in order to finance the Phase III Scope of Work. The Phase III Funding Amount will be disbursed according to the terms and subject to the conditions set forth in Article 5 of this Amendment, below.

- b. The provisions of 24 CFR part 84, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," and 24 CFR part 570, "Community Development Block Grants" are applicable to all activities funded under this Fourth Amendment.

5. Performance of the Phase III Scope of Work. Mercy must comply with the following provisions in performing the Phase III Scope of Work.

- a. Selection Requirements. In the selection of all contractors and professional consultants for the Premises, Mercy must comply with the City's procurement requirements and procedures as described in the Contracting Manual (2006 Amendment) for Federally Funded Construction Projects Financed by the Mayor's Office of Housing, issued by MOHCD on November 18, 2002, as amended on May 22, 2007, as the same may be further amended from time to time (the "Contracting Manual"), and with the requirements of the Small Business Enterprise Program ("SBE Program") as set forth in the SBE Manual according to the procedures established by the City's Contract Monitoring Division.
- b. Plans and Specifications. Before starting any demolition, rehabilitation or construction on the Premises, Mercy must have delivered to the City, and the City must have reviewed and approved, plans and specifications and the construction contract for the Premises entered into between Mercy and Mercy's general contractor and approved by the City (the "Construction Contract"). The plans approved by the City must also be approved by the City and County of San Francisco's Department of Building Inspection (the "Department of Building Inspection") (collectively, the "Approved Plans") prior to the start of any demolition, rehabilitation or construction on the Premises. The Approved Plans must be explicitly identified in the Construction Contract. The specifications approved by the City, including the funder requirements and the technical specifications (the "Approved Specifications") must also be explicitly identified in the Construction Contract. The Construction Contract may include funder requirements not otherwise addressed in the Approved Specifications. The Contracting Manual provides further guidance regarding the City's policies for the review and approval of plans, specifications and construction contracts. After completion of the Scope of Work, Mercy must retain the Approved Plans as well as ""Scopes of Work"" for each unit, the Approved Specifications and the Construction Contract, all of which Mercy must make available to the City upon request
- c. Change Orders. Mercy may not approve or permit any change orders to the Approved Plans and Approved Specifications approved by the City without the

City's prior written consent. Mercy acknowledges that the City's approval of any change order will not constitute an agreement to provide additional funds for the Scope of Work, unless the City agrees in its sole discretion to provide additional funds for that purpose.

- d. Insurance, Bonds and Security. Notwithstanding Article 16 of the Lease, in connection with the Phase III Scope of Work Mercy must obtain and maintain, or cause to be maintained, the insurance and bonds as set forth in Exhibit E, attached hereto and by this reference incorporated herein, from the date of this Amendment until the Completion Date and deliver to the City insurance endorsements and bonds as described in Exhibit E.
- e. Commencement and Completion of Premises. Unless otherwise extended in writing by the City, Mercy must: (a) commence demolition, rehabilitation or construction by a date no later than May 1, 2018; and (b) complete the Changes by a date no later than August 15, 2018, in accordance with the plans and specifications approved by the City, as evidenced by a certificate of occupancy or equivalent certification provided by the Department of Building Inspection, and an architect's or engineer's certificate of completion (the "Completion Date").
- f. Rehabilitation/Construction Standards. All rehabilitation or construction must be performed in a first class manner, substantially in accordance with final plans and specifications approved by the City and in accordance with all applicable codes.

6. Demolition, Rehabilitation or Construction Disbursements. The City's obligation to approve any capital expenditure is subject to Mercy's satisfaction of the following conditions precedent.

- a. Mercy must have delivered to the City an Expenditure Request in form and substance satisfactory to the City, together with: (i) copies of invoices, contracts or other documents covering all amounts requested; (ii) a line item breakdown of costs to be covered by the Expenditure Request; and (iii) copies of checks issued to pay expenses covered in the previous Expenditure Request. The City may grant or withhold its approval of any line item contained in the Expenditure Request that, if funded, would cause it to exceed the budgeted line item as previously approved by the City. Additionally, the City must approve all requested reallocations of Funds for line items previously approved by the City.
- b. No breach of the Lease may have occurred that remains uncured as of the date of the Expenditure Request.
- c. With respect to any Expenditure Request that covers rehabilitation or construction costs, Mercy must have certified to the City that the Premises complies with the labor standards set forth in Exhibit C, Section 1, if applicable.

7. Limitations on Approved Expenditures. The City may refuse to approve any expenditure: (a) during any period in which a breach of the Lease by Mercy remains uncured, or during the pendency of an uncured breach; or (b) for disapproved, unauthorized or improperly documented expenses. The City is not obligated to approve expenditure of the full Funding Amount unless approved Expenditure Requests support disbursement of the full Funding Amount, and in no event may the aggregate amount of all Funds disbursed to Mercy under this Agreement exceed the Funding Amount.

8. Retention.

- a. In addition to the other conditions to disbursements, Mercy acknowledges that the amount of hard costs or tenant improvements costs included in any Expenditure Request associated with rehabilitation or construction, when added to previously approved costs, may not exceed ninety percent (90%) of the approved budgeted costs on a line item basis.
- b. The remaining percentage of hard costs or tenant improvement costs associated with rehabilitation or construction may be held by the City (the "Retention") and may be released only upon satisfaction of all requirements listed in the Construction Manager's Checklist for Release of Retention included in the Contracting Manual and, other than release of Retention to Early Retention Release Contractors, each of the following conditions, unless otherwise approved in writing by the City: (a) completion of rehabilitation or construction of the Scope of Work in accordance with the plans and specifications approved by the City, as evidenced by a certificate of occupancy or equivalent certification provided by the City's Department of Building Inspection, and an architect's or engineer's certificate of completion; (b) timely recordation of a notice of completion; and (c) either expiration of the lien period and the absence of any unreleased mechanics' liens or stop notices or recordation of the lien releases of all contractors, subcontractors and suppliers who provided labor or materials for the Phase III Scope of Work.

9. Authorization for Amendment. Because the Lease is a month-to-month lease, the Director of Property has the authority to approve and enter into this Fifth Amendment without the approval of the City's Board of Supervisors or Mayor.

10. References. No reference to this Fifth Amendment is necessary in any instrument or document at any time referring to the Lease. Any reference to the Lease shall be deemed a reference to the Lease as amended hereby.

11. Applicable Law. This Fifth Amendment shall be governed by, construed and enforced in accordance with the laws of the State of California.


12. Further Instruments. The parties hereto agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this Fifth Amendment.

13. Miscellaneous. Except as expressly modified herein, the terms, covenants and conditions of the Lease shall remain unmodified and in full force and effect. The Lease as amended by this Fifth Amendment constitutes the entire agreement of the parties concerning the subject matter hereof, and supersedes and conceals any and all previous negotiations, agreements, or understandings, if any, regarding the matters contained herein. The execution of this Fifth Amendment shall not constitute a waiver or relinquishment of any rights that City may have relating to the Lease. Mercy and City hereby ratify and confirm all of the provisions of the Lease as amended by this Fifth Amendment. This Fifth Amendment may be executed in any number of counterparts, all of which will constitute but one agreement.


[Signatures on following page]

In witness whereof, the parties hereto have executed this Fifth Amendment as of the date written above.

MERCY: Mercy Midtown, Inc.,
a California nonprofit public benefit corporation

By: 
Name: Jennifer Dolin
Its: Vice President

LANDLORD: CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: 
Andrico Penick 5/13/14.
Its: Acting Director of Property

By: 
Kate Hartley
Director, Mayor's Office of Housing and
Community Development

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: 
Deputy City Attorney

EXHIBIT A
PHASE III SCOPE OF WORK

Midtown Phase III Health and Safety Work
2-Apr-18

Construction

Repair frame and replace trash room doors per Fire Dept	52,500	
Remediate storage closets and install sprinkler heads per fire department(82 closets)	173,000	Total cost \$346,000. Absorbed half in current budget
Improve building and unit signage	25,000	
Repair fire separation doors	45,000	
Install smoke and CO2 detectors in units	26,000	
New unit health and safety work (10)	-	
Additional work in units after completion (30)	-	
Install extinguishers in hallways	260,000	
Install ramp at building 4	-	
Additional contractor general conditions to July 15	90,000	
Contingency 10%	73,150	
Construction Subtotal	744,650	
Phase III Healthy Building Science	20,000	
Architecture	-	
Developer Overhead	78,465	
Hazardous Waste Fees	20,000	
TOTAL PHASE III FUNDS	863,115	

EXHIBIT B
PHASE III BUDGET

EXHIBIT C

GOVERNMENTAL REQUIREMENTS

1. Prevailing Wages. Every contract for the rehabilitation or construction of housing assisted with CDBG Funds must contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. §§ 276a-276a-5), as supplemented by Dept. of Labor regulations (29 CFR part 5) to all laborers and mechanics employed in the development of any part of the housing, and contracts involving their employment will be subject to the provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-332), as supplemented by Dept. of Labor regulations (29 CFR part 5). The prevailing wage requirements of this Section apply to all laborers and mechanics employed in the development of the Premises, including portions other than the assisted Units.
2. Environmental Review. The Premises must meet the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. § 4321), related authorities listed at 24 CFR Section 51.100 and parts 50 and 58 and the California Environmental Quality Act (Cal. Pub. Res. Code §§ 2100 *et seq.*) and implementing regulations.
3. Disability Access. Mercy must comply with all applicable disability access Laws, including the Americans with Disabilities Act (42 U.S.C. §§ 1201 *et seq.*), Section 504 of the Rehabilitation Act (29 U.S.C. § 794) and the Fair Housing Amendments Act (42 U.S.C. §§ 3601 *et seq.*). Mercy is responsible for determining which disability access Laws apply to the Premises, including those applicable due to the use of Funds. In addition, before occupancy of the Premises, Mercy must provide to the City a written reasonable accommodations policy that indicates how Mercy will respond to requests by disabled individuals for accommodations in Units and common areas of the Premises.
4. Lead-Based Paint. Mercy must satisfy any applicable requirements of Chapter 36 of the San Francisco Building Code ("Work Practices for Exterior Lead-Based Paint") and the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821 *et seq.*) and implementing regulations at 24 CFR part 35. Mercy must also comply with the provisions contained in 17 CCR 350000 *et seq.*, and 8 CCR 1532.1 and all other applicable Laws governing lead-based hazards.
6. Relocation. Mercy must meet any applicable requirements of the California Relocation Assistance Act (Cal. Gov. Code §§ 7260 *et seq.*) and implementing regulations in Title 25, Chapter 6 of the California Administrative Code in addition to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. §§ 4601 *et seq.*) and implementing regulations at 49 CFR part 24, the requirements of 24 CFR § 92.353 (Displacement, relocation, and acquisition) and similar Laws.
7. Low-Income Hiring Requirements. The use of Funds triggers compliance with certain hiring requirements imposed by the City's First Source Hiring Ordinance (S.F. Admin. Code Chapter 83), as incorporated into MOHCD's Section 3 Plan. To ensure compliance with those requirements, Mercy must include the provisions attached as Exhibit E in its contract with the

general contractor for the Scope of Work. Mercy will be responsible to the City for ensuring compliance with the requirements listed on Exhibit C.

8. Submitting False Claims; Monetary Penalties. Mercy or any grantee, contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in Section 21.35 of the San Francisco Administrative Code. Mercy or any grantee, contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if Mercy, grantee, contractor, subcontractor or consultant:

(a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval;

(b) knowingly makes, uses or causes to be made or used a false record or statement to get a false claim paid or approved by the City;

(c) conspires to defraud the City by getting a false claim allowed or paid by the City;

(d) knowingly makes, uses or causes to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the City; or

(e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

9. Prohibition on Use of Public Funds for Political Activities. Mercy shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Mercy is subject to the enforcement and penalty provisions in Chapter 12G.

EXHIBIT E

INSURANCE REQUIREMENTS

Subject to approval by the City's Risk Manager of the insurers and policy forms, Mercy must obtain and maintain, or caused to be maintained, the insurance and bonds as set forth below from the date of this Agreement until the Completion Date at no expense to the City:

1. Mercy, Contractors.

(a) to the extent Mercy or its contractors and subcontractors have "employees" as defined in the California Labor Code, workers' compensation insurance with employer's liability limits not less than One Million Dollars (\$1,000,000) each accident, injury or illness;

(b) commercial general liability insurance, with limits no less than One Million Dollars (\$1,000,000) combined single limit per occurrence and Two Million Dollars (\$2,000,000) annual aggregate limit for bodily injury and property damage, including coverage for contractual liability; personal injury; fire damage legal liability; advertisers' liability; owners' and contractors' protective liability; products and completed operations; broad form property damage; and explosion, collapse and underground (XCU) coverage during any period in which Mercy is conducting any activity on, alteration or improvement to the Site with risk of explosions, collapse, or underground hazards;

(c) business automobile liability insurance, with limits not less than One Million Dollars (\$1,000,000) each occurrence, combined single limit for bodily injury and property damage, including owned, hired and non-owned auto coverage, as applicable;

(d) professional liability insurance of no less than One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) annual aggregate limit covering all negligent acts, errors and omissions of Mercy's architects, engineers and surveyors. If the professional liability insurance provided by the architects, engineers, or surveyors is "Claims made" coverage, Mercy shall assure that these minimum limits are maintained for no less than three (3) years beyond completion of the constructions or remodeling. Any deductible over Fifty Thousand Dollars (\$50,000) each claim must be reviewed by Risk Management; and

(e) a crime policy or fidelity bond covering Mercy's officers and employees against dishonesty with respect to the Funds of no less than Seventy-Five Thousand Dollars (\$75,000) each loss, with any deductible not to exceed Five Thousand Dollars (\$5,000) each loss, including the City as additional obligee or loss payee;

(f) pollution liability and/or asbestos pollution liability applicable to the work being performed with a limit no less than One Million Dollars (\$1,000,000) per claim or occurrence and Two Million Dollars (\$2,000,000) annual aggregate per policy. This coverage shall be endorsed to include Non-Owned Disposal Site coverage. This policy may be provided by Mercy's contractor, provided that the policy must be "claims made" coverage and Mercy must require Mercy's contractor to maintain these minimum limits for no less than three (3) years beyond completion of the construction or remodeling.

2. Property Insurance. Mercy must maintain, or cause its contractors and property managers, as appropriate for each, to maintain, insurance and bonds as follows:

(a) Prior to construction:

(i) Property insurance, excluding earthquake and flood, in the amount no less than One Hundred Percent (100%) of the replacement value of all improvements prior to commencement of construction and City property in the care, custody and control of Mercy or its contractor, including coverage in transit and storage off-site; the cost of debris removal and demolition as may be made reasonably necessary by such perils, resulting damage and any applicable law, ordinance or regulation; start up, testing and machinery breakdown including electrical arcing; and with a deductible not to exceed Ten Thousand Dollars (\$10,000) each loss, including the City and all subcontractors as loss payees.

(b) During the course of construction:

(i) Builder's risk insurance, special form coverage, excluding earthquake and flood, for one hundred percent (100%) of the replacement value of all completed improvements and City property in the care, custody and control of Mercy or its contractor, including coverage in transit and storage off-site; the cost of debris removal and demolition as may be made reasonably necessary by such covered perils, resulting damage and any applicable law, ordinance or regulation; start up, testing and machinery breakdown including electrical arcing, copy of the applicable endorsement to the Builder's Risk policy, if the Builder's Risk policy is issued on a declared-Premises basis; and with a deductible not to exceed Ten Thousand Dollars (\$10,000) each loss, including the City and all subcontractors as loss payees.

(ii) Performance and payment bonds of contractors, each in the amount of One Hundred Percent (100%) of contract amounts, naming the City and Mercy as dual obligees or other completion security approved by the City in its sole discretion.

(c) Upon completion of construction:

(i) Property insurance, excluding earthquake and flood, in the amount no less than One Hundred Percent (100%) of the replacement value of all completed improvements and City property in the care, custody and control of Mercy or its contractor.

(ii) Boiler and machinery insurance, comprehensive form, covering damage to, loss or destruction of machinery and equipment located on the Site that is used by Mercy for heating, ventilating, air-conditioning, power generation and similar purposes, in an amount not less than one hundred percent (100%) of the actual replacement value of such machinery and equipment with a deductible not to exceed Ten Thousand Dollars (\$10,000) each loss, including the City as loss payee.

3. General Requirements.

(a) General and automobile liability policies of Mercy, contractors, commercial tenants and property managers must include the City, including its Boards, commissions, officers, agents and employees, as an additional insured by endorsement acceptable to the City.

(b) All policies required by this Agreement must be endorsed to provide no less than thirty (30) days' written notice to the City before cancellation or intended non-renewal is effective.

(c) With respect to any property insurance, Mercy hereby waives all rights of subrogation against the City to the extent of any loss covered by Mercy's insurance, except to the extent subrogation would affect the scope or validity of insurance.

(d) Approval of Mercy's insurance by the City will not relieve or decrease the liability of Mercy under this Agreement.

(e) Any and all insurance policies called for herein must contain a clause providing that the City and its officers, agents and employees will not be liable for any required premium.

(f) The City reserves the right to require an increase in insurance coverage in the event the City determines that conditions show cause for an increase, unless Mercy demonstrates to the City's satisfaction that the increased coverage is commercially unreasonable and unavailable to Mercy.

(g) All liability policies must provide that the insurance is primary to any other insurance available to the additional insureds with respect to claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought and that an act of omission of one of the named insureds that would void or otherwise reduce coverage will not void or reduce coverage as to any other insured, but the inclusion of more than one insured will not operate to increase the insurer's limit of liability.

(h) Any policy in a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs are included in the general annual aggregate limit must be in amounts that are double the occurrence or claims limits specified above.

(i) All claims based on acts, omissions, injury or damage occurring or arising in whole or in part during the policy period must be covered. If any required insurance is provided under a claims-made policy, coverage must be maintained continuously for a period ending no less than three (3) years after recordation of a notice of completion for builder's risk or the Compliance Term for general liability and property insurance.

(j) Mercy must provide the City with copies of endorsements for each required insurance policy and make each policy available for inspection and copying promptly upon request.

First Source Hiring Requirements and Numerical Goals

Mercy's use of Funds triggers the following hiring requirements imposed by the City's First Source Hiring Ordinance (San Francisco Administrative Code Chapter 83) as incorporated into MOHCD's Section 3 Plan.

1. Section 3 Requirements.

(a) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u ("Section 3"), based on Borrower's receipt of City funds under MOHCD's Section 3 Plan. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 be directed to low-and very low-income persons, particularly persons who are recipients of HUD assistance for housing, to the greatest extent feasible.

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

(c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and to post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference and set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions and the qualifications for each, the name and location of the person(s) taking applications for each of the positions and the anticipated date work will begin.

(d) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135 and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

(e) The contractor will certify that any vacant employment positions, including training positions, that are filled: (i) after the contractor is selected but before the contract is executed; and (ii) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

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

2. Recommended Minimum Numerical Goals. Contractors may demonstrate compliance with the "greatest extent feasible" requirement of Section 3 by meeting the numerical goals set forth below for training, employment and contracting opportunities to Section 3 residents and Section 3 business concerns, which represent minimum numerical goals.

(a) Training and Employment of Section 3 Residents (24 CFR § 135.30(b)). Contractors and subcontractors may demonstrate compliance by committing to employ Section 3 residents as thirty percent (30%) of the aggregate number of new hires (full-time employees for permanent, temporary or seasonal employment) and an overall goal of thirty percent (30%) of total work hours for the entire project.

(b) Contracts with Section 3 Business Concerns (24 CFR § 135.30). Contractors and subcontractors may demonstrate compliance with the requirements of this part by committing to award to Section 3 business concerns:

(i) At least ten percent (10%) of the total dollar amount of all Section 3 covered contracts for building trades work arising in connection with housing rehabilitation, housing construction and other public construction; and

(ii) At least three percent (3%) of the total dollar amount of all other Section 3 covered contracts.