

**CONTRIBUTION AGREEMENT
SUMMARY PAGE**

Agency: **Santa Clara Methodist Retirement Foundation**

Project: **Capital Improvement – Elevator Replacement at Liberty Tower**

Description: *Liberty tower is a senior-only affordable rental housing development in the City of Santa Clara. The project is the replacement of a freight elevator, a passenger elevator and all related electrical systems.*

Funding Source: **Community Development Block (CDBG) – CDFA #14.218**

Grant Number: **B-23-MC-06-0022** Project No.: **CDI-23-C01**

Total Grant Award: **\$750,000 (Not to Exceed)**

Agreement Term: Start Date: **07/18/2023** End Date: **04/30/2024**

Affordability Period: Start Date: **05/1/2024** End Date: **05/1/2034**

PARTIES TO AGREEMENT:

	ORGANIZATION	CITY OF SANTA CLARA
Organization Name:	Santa Clara Methodist Retirement Foundation	Housing & Community Services Division
Address for Legal Notice (city/state/zip)	890 Main Street Santa Clara, CA 95050	1500 Warburton Avenue Santa Clara, CA 95050
Attention:	Kathy Betts Director of Operations	Adam Marcus Housing Division Manager
Email Address:	kathy@scmrf.org	amarcus@santaclaraca.gov
Telephone No.:	(408) 243-6226	(408) 615-2491
Project Contact:	Kathy Betts	(408) 850-6155
Tax ID	94-2205588	
Federal Unique ID #	FEQLKRTY5M34	
Type of Entity:	501 (c) 3 public benefit corp.	
State of Incorporation or Residency:	California	
Ebix Insurance #	S20002312	

**CONTRIBUTION AGREEMENT
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
SANTA CLARA METHODIST RETIREMENT FOUNDATION, INC.**

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Santa Clara Methodist Retirement Foundation, Inc., a California non-profit corporation, ("Organization") City and Organization may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. City desires to secure the services more fully described in this Agreement, at Exhibit A, entitled "Scope of Works and Performance".
- B. Organization represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses, and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; and,
- C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT PROVISIONS

1. AGREEMENT DOCUMENTS

The documents forming the entire Agreement between City and Organization shall consist of these Terms and Conditions and the following Exhibits, which are hereby incorporated into this Agreement by this reference:

- Exhibit A: Scope of Work and Performance Measures
- Exhibit B: Budget Summary and Payments Requirements
- Exhibit C: Insurance Requirements
- Exhibit D: Special Grant Conditions
- Exhibit E: Ethical Standards and Affidavit of Compliance
- Exhibit F: MBE/WBE Guidelines
- Exhibit G: Section 3 Guidelines
- Exhibit H: Use Restriction Agreement
- Exhibit I: Promissory Note
- Exhibit J: Deed of Trust

This Agreement, including the Exhibits set forth above, contains all the Agreement's, representations and understandings of the Parties, and supersedes and replaces any previous Agreements, representations and understandings, whether oral or written. In the event of any inconsistency between the provisions of any of the Exhibits and the Terms and Conditions, the Terms and Conditions shall govern and control.

2. FUNDING AND APPROPRIATION

Pursuant to the provisions of Title I of the Housing and Community Development Act of 1974, as amended (HCD Act), Public Law 93-383, the City has received Community Development Block Grant funds ("CDBG") from the United States Department of Housing and Urban Development ("HUD") as an entitlement. From the CDBG grant funds, City has appropriated an amount not to exceed Seven Hundred Fifty Thousand Dollars (\$750,000) ("CDBG Funds"), subject to budget appropriations, to be given to Organization.

Upon Organization's compliance with the terms and conditions of this Agreement, City will contribute to Organization the amount set forth in this Section. The Grant Funds shall not be used for any other purpose than to pay expenses (or if said expenses have already been paid by Organization, then for reimbursement of same to Organization) related to the purpose of the Grant, as set forth in Exhibit A. None of the City's Contribution will be used to pay for any expenses of Organization incurred before the start of the Term of Agreement. All work performed or materials provided in excess of the maximum compensation or work performed or materials provided that are deemed ineligible shall be at the Organization's expense

3. TERM OF AGREEMENT

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on July 18, 2023, and terminate on April 30, 2024.

The City reserves the right at its sole discretion, and subject to funding and City Council appropriation, to extend the term of this Agreement Unless otherwise mutually agreed upon by the Parties, the Scope of Services (Exhibit A) shall remain the same under any extension of the Agreement.

4. PROPERTY USE RESTRICTIONS

A. Affordability Restriction.

The Organization must execute the 10-year affordability agreement, attached hereto as Exhibit H, restricting the use of the property where the Project is located. The Affordability Agreement shall impose restrictions commencing on May 1, 2024 and terminating on May 1, 2034. The Organization agrees to record

this Use Restriction against the property where the Project is located upon written request of City.

The Organization agrees that improvements shall be used to provide services for low-income persons at or below 80% of area median income (AMI). The Organization agrees to maintain the use in accordance with all applicable CDBG program requirements for the term of this Use Restriction. The Grant Award is conditioned upon the Organization maintaining the CDBG-use for a period not less than ten (10) years.

The Organization hereby warrants, represents, and agrees that it shall not interfere with, terminate or otherwise discontinue CDBG-use during the term of this Affordability Agreement. If Organization terminates or otherwise suspends the CDBG-use during the ten (10) years of the term of the Affordability Agreement, the Organization agrees it shall be immediately obligated to refund to the City all of the Grant funds awarded unless the City and the Organization otherwise agree in writing. If Organization terminates or otherwise suspends the CDBG Use between the second (2th) and the fifth (5th) years of the Term, Organization agrees it shall be immediately obligated to refund to CITY a pro-rated portion of the Grant Award funds unless the City and the Organization otherwise agree in writing.

B. Promissory Note.

The Organization shall execute a Promissory Note (the "Note") in a form acceptable to the City for the amount determined in accordance with provision set forth in this Agreement. The Note shall become due and payable:

- i. Upon sale of the property located at 890 Main Street in Santa Clara, CA by the Organization prior to May 1, 2034; or
- ii. Upon a change in the use of the property by the Organization prior to the end of the Affordability Restriction Agreement to a use which is not an "eligible activity" under the Acts and Regulations issued by HUD pursuant thereto; or
- iii. Upon a default or breach under the Promissory Note, Deed of Trust, or this Grant Agreements, and any exhibits thereto, including without limitation the Use Restriction Agreement.

The parties expressly agree that no sum shall be due and payable under the Note if, on **May 1, 2034**, the contingencies set forth as "(i)", "(ii)", and "(iii)" in the preceding paragraph have not occurred. At the end of the Use Restriction Term, the note and any liabilities or obligations, or both, arising therefrom, whether expressed or implied, shall be deemed null and void, and the Note shall be canceled without further act by any party hereto, unless the City has exercised its rights under the Deed of Trust, prior to the end of the Affordability Restriction.

C. Deed of Trust

The Promissory Note shall be secured by a Deed of Trust (the "Deed of Trust), in a form acceptable to the City on the Property that is more fully described in **EXHIBIT J**, attached hereto and incorporated herein by reference. In the event that the contingencies set forth in the preceding section do not occur, the City shall record a Full Reconveyance on the Property.

D. Conditions

The use of the property will be in accordance with all applicable City regulations and ordinances, as well as the CDBG national objectives and eligible activity provisions of the Housing and Community Development Acts, **further defined in 24 CFR Part 570.200**. The specific CDBG National Objective met by this Project is described in **EXHIBIT A**.

5. SCOPE OF WORK

Organization shall perform the work as specified in detail on **EXHIBIT A** entitled "Scope of Work and Performance Measures" and shall comply with the terms and conditions of this Agreement.

6. REPROGRAMMING OF FUNDS

Amendments to the terms and conditions of this Agreement shall be requested in writing by the Party desiring such revision, and any such adjustment to this Agreement shall be determined and effective only upon the mutual agreement in writing of the Parties hereto unless the amendments are made by HUD, in which case they will be adopted as ordered.

- A. Initiated by City: City may re-channel funds budgeted in one cost category into another cost category of the Program. Before re-channeling funds, the City will give the Organization ten (10) business days written notice of the re-channeling of funds along with a copy of an expenditure review for the Program. City shall make its final determination with respect to the re-channeling of funds only after Organization has been given an opportunity to present its views and recommendations. In no event shall the City be bound to accept Organization's views or recommendations.
- B. Initiated by Organization: The City's Program Manager may, at the request of Organization, approve re-channeling of funds from any cost category(ies) to another at any time provided that there is not an increase in the overall Total Budget amount specified in Exhibit B of this Agreement. Approval by the City's Program Manager of such rechanneling of funds must be in writing.

7. PROGRAM COORDINATION

- A. CITY: The Housing and Community Services Manager or his/her designee, shall be the Program Manager on behalf of City and shall render overall supervision of the progress and performance of this Agreement by City. All services to be performed by City shall be under the overall direction of the Program Manager.
- B. ORGANIZATION: Organization shall assign a single Program Director who shall have overall responsibility for the progress and execution of this Agreement. Should circumstances or conditions subsequent to the execution of this Agreement require a substitute Program Director, Organization shall notify City immediately of such occurrence. Program Director and Organization staff will fully cooperate with City's Program Manager relating to the Program, areas of concern, and the impact of Program on residents of City.
- C. NOTICES: All notices or other correspondence required or contemplated by this Agreement shall be sent to the Parties at the following addresses:

City: Housing and Community Services Division
 City of Santa Clara
 1500 Warburton Avenue
 Santa Clara, California 95050
 and via email at: communityservice@santaclaraca.gov

Organization: Santa Clara Methodist Retirement Foundation
 Kathy Betts
 890 Main Street
 Santa Clara, CA 95050

8. ACCOUNTING AND FINANCIAL RECORDS

Organization shall establish and maintain at all times, on a current basis in connection with the provision of Project, an adequate accounting system in accordance with generally accepted accounting principles and standards and acceptable to Director covering all revenues, costs, and expenditures with respect to Organization's performance under this Agreement. Organization shall maintain its accounting system and shall provide City with reports that separate costs and expenses incurred by Organization with City funds as distinguished from costs and expenses paid for from other funding sources.

9. REPORTING REQUIREMENTS

Organization shall submit reports related to Organization's performance under this Agreement prepared in accordance with **EXHIBIT A** and, to the extent applicable. The format of the reports shall be as provided in this Agreement unless otherwise directed by the Director. A final report shall be delivered to City prior to expiration of this Agreement, as may be further described in **EXHIBIT A**

10. RIGHT OF EXAMINATION AND AUDIT AND PRESERVATION OF RECORDS

Organization agrees that the City Manager, Auditor, Attorney or the Director, or any of their duly authorized representatives, shall have access to and the right to examine all facilities and activities of Organization related to Organization's performance of this Agreement, including the right to audit, conduct further financial review, examine and make excerpts or transcripts of all contracts, subcontracts, invoices, payroll records, personnel records, and all other data or financial records relating to matters covered by this Agreement at any time during the term of this Agreement. Organization shall cooperate with City in such audit, examination, further review and shall provide City with access to Organization's staff and to all relevant records, documents, and data, including but not limited to, management letters, board minutes, and payroll

11. INSURANCE

Prior to the commencement of any of the activities described in this Agreement and during its entire term, the Organization shall provide and maintain, in full force and effect, the insurance requirements set forth in the attached **EXHIBIT C** not later than the date of execution of this Agreement. All policies, endorsements, certificates and/or binders shall be subject to approval by the Risk Manager of the City as to form and content. These requirements may not be amended or waived unless approved in writing by the Risk Manager. Organization agrees to provide City with a copy of said policies, certificates and/or endorsements upon execution of this Agreement.

12. OBLIGATIONS OF ORGANIZATION

A. Cooperation of Organization. Organization shall:

- i. Provide City, prior to the Effective Date of this Agreement, and, at all times during the Agreement period, within thirty (30) days of a change in status of any of the following documents, with:
 - a. A copy of Articles of Incorporation under the laws of the State of California.
 - b. A copy of current Bylaws of Organization.

- c. Verification and documentation of Internal Revenue Service nonprofit status under Title 26, Section 501(c) of the Internal Revenue Code.
 - d. Verification and documentation of State of California Franchise Tax Board tax exempt status under Section 23701(d), of the California Revenue and Taxation Code.
 - e. Names and addresses of current Board of Directors of Organization.
 - f. A copy of the adopted personnel policies and procedures including an Affirmative Action Plan if staff exceeds fifteen (15) employees; and,
 - g. An organizational chart and staffing profile.
- ii. Report in writing any changes in the Organization 's Articles of Incorporation, Bylaws, tax exempt status and/or Board membership immediately to the City's Program Manager or his/her designee.
 - iii. Maintain no greater than forty nine percent (49%) of the Board of Directors as "interested persons" under this Agreement. For the purposes of this Agreement, "interested persons" means either:
 - a. Any person currently being compensated by the Organization for services rendered to the Organization within the previous twelve (12) months, whether those services were rendered as a full or part time employee, independent contractor or otherwise, excluding any reasonable compensation to a director as a director; or,
 - b. Any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of any such person.
 - iv. Include on the Board of Directors representation from the broadest possible cross section of the community, including those with expertise and interest in the Organization's services, representatives from community organizations interested in the Organization's services, and users of the Organization's services.
 - v. Open to the public all meetings of the Board of Directors, except meetings, or portions thereof, dealing with personnel or litigation matters.
 - vi. Keep minutes, approved by the Board of Directors, of all regular and special meetings. (A copy of approved minutes shall be forwarded to the City's Program Manager).
 - vii. Encourage public participation in planning and implementing services provided under this Agreement.

- viii. Comply with 2 CFR § 200.321(b) and the City of Santa Clara Disadvantaged Business Enterprise Program, available from the City's Program Manager, regarding the use of minority and/or female owned businesses, vendors, suppliers, and contractors to the maximum extent feasible, for items funded under this Agreement.

B. Program Performance of Organization. Organization shall:

- i. Submit to City performance criteria and schedule of activities describing measurable annual goals and objectives of the Program incorporated in this Agreement as **Exhibit A**.
- ii. Submit to the City, on the prescribed form, a line-item operating budget of the Program to be incorporated in this Agreement as **Exhibit B**, titled "Budget Summary and Payment Requirements", attached hereto and incorporated herein by this reference.
- iii. Obtain completed intake documents for each City of Santa Clara resident receiving services under this Agreement. Such forms shall be approved by the City and shall be made available for review during the monitoring process.
- iv. File reports (on forms approved by City) with the city on the type and number of services rendered to beneficiaries through the operation of the Program. Such reports shall evaluate the manner in which the Program is achieving its objectives and goals according to standards established by City. The reports shall be due within ten (10) business days after the end of each reporting period and shall cover the time immediately preceding the date on which the report is filed.
- v. Provide a completed Program evaluation survey from a representative sampling of beneficiaries served. The results of this survey shall be periodically reviewed and approved by the Organization's Board of Directors. Format of survey documents shall be subject to the approval of the City's Program Manager. Forms shall be held at Organization's administrative offices and shall be made available for review by City during the monitoring process.
- vi. Coordinate its services with existing organizations providing similar service in order to foster community cooperation and to avoid unnecessary duplication of services.
- vii. Seek out and apply for other sources of revenue in support of its operation or services from county, state, federal and private sources.
- viii. Include an acknowledgement of City support on all appropriate Program publicity and publications using words to the effect that services are funded by the City of Santa Clara. Any Program publicity acknowledging

City funding that is produced during the Agreement period shall be reviewed by City prior to any public release.

- ix. Organization represents and warrants that it has the authority to enter into this Agreement. Organization further represents and warrants that its signatory to this Agreement is authorized to execute this Agreement on Organization's behalf.
- x. Comply with the City's Ethical Standards as set forth in **EXHIBIT E**.

13. OBLIGATIONS OF CITY

- A. Monitoring for Compliance with Agreement: Consistent with the applicable sections of 24 CFR §§ 570.501-502 and 2 CFR § 200.328, the city will evaluate the Program based on compliance with the Agreement, semi-annual reports received from Organization, and on-site monitoring of client and service-based data.
- B. Method of Payment: City shall reimburse Organization for all allowable costs and expenses incurred in providing the Program during the Agreement period, not to exceed the total sum of Seven Hundred Fifty Thousand Dollars (\$750,000).

The City may, at any time and in its absolute discretion, elect to suspend or terminate payment to Organization, in whole or in part, under this Agreement or not to make any particular payment under this Agreement in the event of unsatisfactory performance or noncompliance. Reimbursement shall be initiated quarterly, or other time period approved by the City, upon submission of invoices and appropriate documentation

14. ASSIGNABILITY AND INDEPENDENT CONTRACTOR REQUIREMENTS

City and Organization bind themselves, their successors and assigns to all covenants of this Agreement.

- A. The relationship of Organization to City is that of an independent contractor. Organization has full rights to manage its employees subject to the requirements of the law. All persons employed by Organization in connection with this Agreement shall be employees of Organization and not employees of City in any respect. Organization shall be responsible for all employee benefits, including, but not limited to, statutory worker's compensation benefits.
- B. None of the work or services to be performed hereunder shall be delegated or subcontracted to third parties without prior written City approval.
- C. No subcontractor of Organization will be recognized by City as such. All subcontractors are deemed to be employees of Organization, and Organization agrees to be responsible for their performance and any liabilities attaching to their actions or omissions.

- D. Organization will monitor any subcontractors to ensure compliance with the terms and conditions of this Agreement and provide records of their compliance as requested.
- E. Organization assures that the subcontractor(s) maintain(s) current licensure and indemnity insurance appropriate for obligations undertaken by subcontractor(s) and provides copies of such to City.
- F. Organization will provide City with records of reimbursement to subcontractor(s) for obligations incurred under subcontract.
- G. City has the right to refuse reimbursement for obligations incurred under any subcontract that does not comply with the terms of this Agreement.
- H. Organization shall “hold-back” a ten percent (10%) retention from invoice submissions from subcontractors. Retention funds shall be paid out to subcontractors after a Notice of Completion has been recorded for at least 35 days, or until all lien releases are received, and all local, federal, and state requirements have been certified and completed.

15. COMPLIANCE WITH LAW

- A. Compliance: Organization shall become familiar and comply with and cause all its subcontractors and employees, if any, to become familiar and comply with all applicable federal, state and local laws, ordinances, codes, regulations, and decrees, including, but not limited to, those federal rules and regulations outlined in **Exhibit D**, titled “**Special Grant Conditions**”, attached hereto and incorporated herein by this reference.
- B. Assurances: Failure Organization, in any manner, to observe and adhere to law as described herein or as amended shall in no way relieve Organization of its responsibility to adhere to same and Organization herein acknowledges this responsibility. Organization shall hold City, its City Council, officers, employees and boards and commissions harmless from Organization's failure(s) to comply with any requirement imposed on Organization by virtue of the utilization of City funds. Organization shall reimburse City for any disallowed costs and/or penalties imposed on City because of Organization's failure to comply with all applicable federal, state and local laws, ordinances, codes, regulations and decrees.

16. INTEGRATED DOCUMENT

This Agreement embodies the Agreement between City and Organization and its terms and conditions. No verbal agreements or conversations with any officer, agent or employee of City prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding upon City.

17. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Organization agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way Organization receipt of funds pursuant to this Agreement – including claims of any kind by Organization's employees or persons contracting with Organization to perform any portion of the Scope of Work and Performance Measures as outlined in **Exhibit A** – and shall expressly include passive or active negligence by City connected with the Services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.
- B. Organization's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Organization, against City (either alone, or jointly with Organization), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Organization is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Organization warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Organization's responsibilities under the Act.

18. WHEN RIGHTS AND REMEDIES WAIVED

In no event shall any payment by City hereunder constitute or be construed to be a waiver by City of any breach of covenants or conditions of this Agreement or any default which may then exist on the part of Organization, and the making of any such payment while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to City or Organization with respect to such breach or default.

19. TERMINATION

- A. In accordance with 2 CFR § 200.338, the City may suspend or terminate this Agreement if the Organization materially fails to comply with any terms of this Agreement, which include, but are not limited to;

- i. Organization fails to comply with existing conditions of the Agreement; or,
 - ii. Organization refuses to accept any additional conditions that may be imposed by City or the Federal government; or,
 - iii. With receipt by City of any information that indicates a failure or deficiency by Organization to comply with any provision of this Agreement or provide unsatisfactory service, the City shall have the right to require corrective action to enforce compliance with such provision; or,
 - iv. Organization fails to implement required corrective actions in a timely and sufficient fashion.
- B. Termination for Convenience: Consistent with the applicable section of 24 CFR § 570.503 and 2 CFR § 200.326, City or Organization may terminate or suspend this Agreement in whole or in part when both Parties agree that the continuation of the Program would not produce beneficial results commensurate with the further expenditure of funds.
- C. Upon Suspension or Termination Organization Shall
- i. Not incur new obligations and shall cancel as many outstanding obligations as possible; and,
 - ii. Be paid only for services actually rendered to City to the date of such suspension or termination; provided, however, if this Agreement is suspended or terminated for fault of Organization, City shall be obligated to compensate Organization only for that portion of Organization's services which are of benefit to City; and,
 - iii. Turn over to City immediately any and all copies of studies, reports and other data, prepared by Organization or its subcontractors, whether or not completed, if any, in connection with this Agreement; such materials shall become property of City. Organization, however, shall not be liable for City's use of incomplete materials or for City's use of complete documents if used for other than the services contemplated by this Agreement; and,
 - iv. Act in accordance with the Closing Out Procedure.

20. CLOSING OUT PROCEDURE

- A. Organization is responsible for City's receipt of final billing by after the completion of the Agreement period. Any amount of the grant remaining unbilled after the applicable date will be reprogrammed by City.

- B. City is not liable for any Organization expenses incurred after the Agreement period of this Agreement.
- C. Closing Out does not impair the City's right to subsequently require repayment by Organization for disallowed costs or other adjustments, or any other City costs and expenses related to this Agreement or the enforcement thereof.

21. THE CAPTIONS

The captions of the various sections, paragraphs, and subparagraphs of the Agreement are for convenience only and shall not be considered nor referred to for resolving questions of interpretation.

22. NO THIRD-PARTY BENEFICIARY

This Agreement shall not be construed or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any claim or right of action hereunder for any cause whatsoever.

23. SEVERABILITY

In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal, or unenforceable in any respect, it shall not affect the validity of the other provisions which shall remain in full force and effect.

If any part of this Agreement is for any reason found to be unenforceable by a court of competent jurisdiction, all other parts nevertheless remain enforceable. CITY and Organization agree that to the extent that the exclusion of any unenforceable provisions from this Agreement affects the purpose of this Agreement, then the parties shall negotiate an adjustment to this Agreement in order to give full effect to the purpose of this Agreement or either party may terminate this Agreement.

24. NO PLEDGING OF CITY'S CREDIT

Under no circumstances shall Organization have the authority or power to pledge the credit of City or incur any obligation in the name of City. Organization shall save and hold harmless City, its City Council, its officers, employees, and boards and commissions for expenses arising out of this Agreement.

25. NO USE OF CITY NAME OR EMBLEM

Organization shall not use City's name, insignia, or emblem, or distribute any information related to services under this Agreement in any magazine, trade paper, newspaper or other medium without express written consent of City.

26. VENUE

In the event that suit shall be brought by any Party to this Agreement, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, Santa Clara Division.

27. ORGANIZATION FINANCIAL DISCLOSURE REQUIREMENTS

Organization services to be rendered under the provisions of this Agreement are excluded from the requirement of filing a Financial Disclosure Statement by Title 2, California Code of Regulations, Section 18700 (2)(A) and (B).

28. CONFLICT OF INTEREST

Organization certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Organization and that no person associated with Organization has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Organization is familiar with the provisions of California Government Code section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Organization will advise City if a conflict arises.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. The Effective Date is the date that the final signatory executes the Agreement. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

**CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation**

Approved as to Form:

Dated: _____

Glen R. Googins
City Attorney

Jōvan D. Grogan, City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

“CITY”

SANTA CLARA METHODIST RETIREMENT FOUNDATION, INC.
a California nonprofit corporation

Dated: _____

By: _____

Name: Priscilla J. Haynes

Title: Executive Officer

Local

Address: 890 Main Street

Santa Clara, California 95050

Email

Address: phaynes@scmrf.org

Telephone: (408) 374-9511

Fax: _____

“ORGANIZATION”

**CONTRIBUTION AGREEMENT
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
SANTA CLARA METHODIST RETIREMENT FOUNDATION, INC.**

EXHIBIT A
SCOPE OF WORK AND PERFORMANCE REQUIREMENTS

1.01 Purpose of Project

Organization shall implement this Agreement in accordance with the applicable provisions of Title I of the Housing and Community Development Act of 1990, as amended, the federal regulations as set forth in 24 CFR Part 570, written interpretations, or requirements by the Department of Housing and Urban Development (HUD), and all other rules and regulations pertaining thereto. All these elements shall be collectively called "CDBG".

The purpose of this Project is to modernize the aging elevators at 890 Main Street (a.k.a, Liberty Tower) constructed in 1973. The scope of work will encompass elevator modernization/replacement and improvements to the related systems.

Scope of Work

Electrification

A new microprocessor-based control system shall be provided to perform the functions of safe elevator motion. Included shall be all of the hardware required to connect, transfer and interrupt power, and to protect the motor against overloading. Each controller cabinet containing memory equipment shall be properly shielded from line pollution. The microcomputer system shall be designed to accept reprogramming with minimum system down time. All high voltage (110V or above) contact points inside the controller cabinet shall be protected from accidental contact in a situation where the controller doors are open. The microprocessor-based control system shall utilize on-board diagnostics for servicing, troubleshooting, and adjusting without requiring the use of an outside service tool.

24/7 Emergency Communications which meets the intent of IBC 2018 and ASME A17.1 2019 code. In addition to the two-way audio communication, it allows for text based two-way communication between the elevator cab and a Customer Care Center as well as means to visually verify if the cab is occupied when an emergency call is placed.

Fixtures & Doors

New signalization. New door panels that are UL fire rated to 1.5 hours.

A new car door operator shall be installed and arranged to automatically open and close the car door panel. The opening and closing shall be made smoothly and shall be cushioned at both final limits of travel. The door operator shall be arranged so that, in the event of a power failure of the operating circuits, the car doors cannot be readily opened by hand from within the elevator cab. The elevator shall not be able to move away from a landing until the car door panel is fully closed. The car door shall be equipped with a contact, which will prevent operation of the car unless the car door is closed. The contact shall be of the approved type and tested as required by code.

Shaft Equipment

New guide shoes and buffers. Buffers will be of the proper capacity rating and stroke as required by Code.

Hydraulic Equipment

New field pipe and/or accessories

Power Unit

A hydraulic power unit, especially designed and manufactured for this service, will be furnished. The motor and pump will be submersed under the oil inside the tank in order to provide for sound isolation. A muffler, designed to reduce pulsation and noise which may be present in the flow of hydraulic oil, will be provided in the oil line at the top of the pump.

Jack Unit

The elevator will be raised to a convenient point in the hoist way and then secured. The piston will be disconnected and lowered until it rests on the cylinder head and all oil from the hydraulic line and tank will be drained from the system. The existing piston and cylinder will then be removed.

1.02 Location of Project

Unless otherwise indicated, the Project specified below will be offered at the following location:

<i>Site Name</i>	<i>Site Address</i>
Liberty Tower	890 Main Street Santa Clara, CA 95050

1.03 Project National Objective and Eligibility

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

1.04 HUD Objectives and HUD Outcomes

The Organization certifies that the activity(ies) carried out under this Agreement will **Create Suitable Living Environments** by meeting the Consolidated Plan Goal of **Providing Affordable Housing** through rehabilitation of affordable multi-family rental housing.

Matrix Code	14B
National Objective	LMH Low/Mod Housing
Accomplishment type	Rehab; Multi-Unit Residential
HUD Objective	Provide Affordable Housing
HUD Outcome	Create Suitable Living Environments

Project meets the National Objective of benefiting low- and moderate-income persons. Eligible clients under this Agreement shall be senior residents of the City of Santa Clara. Seniors are recognized by HUD as a population of presumed benefit.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

1.05 Project Timeline.

The timeline below constitutes the measurable goals by which Project performance will be evaluated. Activities are identified for each type of Project Identify target dates (month/year) for all items that apply to the Project. If an activity is already completed, write the date (month/year) that it was completed.

Work Phase	Completion Date
Pre-Development Phase.	
Complete Environmental Review process	DONE
Complete/submit the draft of Design and Architecture Drawing Plan and Project Specifications to City for review and approval (if applicable)	n/a
Housing approves the Project Plan/Drawing	n/a
Submit the Final Architecture Drawing/Plan to the Building Department to review and issuance of permits	n/a
Pre-Construction Meeting with Grantee – Discuss bid process, procurement, project, timeline, etc.	6/1/2023
Constructions Phase.	
Modify Project Specifications for Bid Package	6/15/2023
Prepare Bid Package for construction	6/30/2023
Provide the Prevailing Wage Decision for bid package	7/1/2023
Place a short advertise for bids in newspapers (at least 21 days before bid opening)	7/15/2023
Pre-Bid Conference or Walk-Thru (Not Mandatory)	8/1/2023
Bid opening	8/15/2023
Select the Bidder	8/30/2023
Pre-Construction meeting (Mandatory for parties involved)	9/15/2023
Complete Construction Contract (AIA Agreement)	10/15/2023
Sign Contract (AIA Agreement)	10/30/2023
Issue Notice to Award/Proceed	11/10/2023
Obtain necessary permits	11/30/2023
Begin construction	12/01/2023
Finish construction	02/28/2024
Building Permit sign-off	03/15/2024
Issue and Record the Notice of Acceptance or Notice of project completion (send a conforming copy to Housing)	03/31/2024

1.06 Project Implementation.

Organization shall have full responsibility to procure and to monitor the performance of contractors and subcontractors hired, with technical assistance provided by the City as needed, subject to the following requirements:

- 1) Organization or Organization's representative shall describe its method of procuring contractors. This procurement plan shall be subject to written approval by City.
- 2) Organization shall prepare a scope of work, describing the various development and construction activities to be undertaken. This scope of work shall be approved, in writing, by City, before any financial commitments to contractors are entered into by Organization.
- 3) Organization shall develop bid/proposal documents for all contractors. These documents shall be approved by the City, in writing, prior to public release.
- 4) Organization shall obtain required permits and plan approvals before undertaking any construction work.
- 5) The City shall comply with state prevailing wage reporting requirements. Contractors and subcontractors shall be registered with the Department of Industrial Relations (DIR) prior to submitting any bid documents.

1.07 Reporting Requirements.

On a format prescribed by the City, the Organization must submit the following reports:

- 1) Semi-Project Status Reports. At the end of the 2nd and 4th quarters, Organization shall provide the Project Status Report to the Housing and Community Services Division an updated Project status until the Project completes.
- 2) Reporting Schedule. All required reports shall be submitted to the no later than fifteen (15) calendar days after the end of the second quarter and no later than fifteen (15) calendar days after the end of the fourth quarter.
- 3) Annual Report. At the end of each fiscal year during the 10-year use period, Organization shall submit an Annual Report that certifies clients benefiting from services provided on site continue to be Low- and Moderate-Income persons.

- 4) Unduplicated Participants. For purposes of this Agreement, **UNDUPLICATED PARTICIPANTS** shall be defined as participants who receives more than one service offered by this project, and at least once a year but who may not be counted more than once in that year. Organization shall retain records documenting eligibility. Such records shall include family size, total household income, gender head of household, race, ethnic and disability data.

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Total Client serve after project completion	101	101	101	101	101	505

1.08 Cost Reimbursement.

Project will be reimbursed based upon the percentage of work completed on approved invoices submitted pursuant to this Agreement. Requests for reimbursement will be made on a form and in manner prescribed by the City under provisions as set forth in **EXHIBIT B**, entitled “Budget Summary and Payments Requirements”.

1.09 Final Payment/Close-Out Project Requirements

Organization will ensure that the following documentation is provided to the City in a timely manner:

- 1) Closeout Construction Certificate of Substantial Completion
- 2) Complete Certification of Completion Form
- 3) Certification of Final Design Letter
- 4) Closeout Construction Insurance Notification
- 5) Closeout Construction Certificate of Occupancy Closeout Construction
- 6) Closeout Construction Photos & Brief Description
- 7) Unconditional Lien Release for Final Payment from the General Contractor and all the Sub-Contractor(s)
- 8) Recorded of Notice of Completion Report
- 9) Final Progress Report: (The report shall include a summary of progress toward the achievement, a list of significant results (positive or negative).

**CONTRIBUTION AGREEMENT
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
SANTA CLARA METHODIST RETIREMENT FOUNDATION, INC.**

EXHIBIT B

BUDGET SUMMARY AND PAYMENT REQUIREMENTS

1.01 Budget Summary.

BUDGET CATERGORY	CDBG Request	Other Funds	Total Project Cost
<i>Predevelopment Costs</i>			
Environmental Review Assessment			
Planning Design, or Architectures Costs		25,550	25,550
Permits Fees		TBD	TBD
Construction Manager costs			
Admin costs			
SUBTOTAL			
<i>Construction Costs</i>			
Construction Materials Costs			
Bolt-in Fixtures Costs			
General Construction Costs			
Landscaping Costs			
Site Improvements	750,000	75,000	825,000
Plumbing,			
Electrical			
SUBTOTAL	750,000	100,550+	850,550+
<i>Admin & Project Delivery Costs</i>			
Addendum 1			
Addendum 2			
Addendum 3			
SUBTOTAL			
TOTAL PROJECT COSTS	750,000	100,550+	850,550+

*Attach one page listing construction components included in the Primary Construction and/or elements included in the Other Construction category (physical improvement projects only). TBD – Permit Fees and Plan Check fees not identified as of yet

**Federally funded projects must meet all ADA requirements.

1.02 Payments Process.

- 1) City agrees to reimburse Organization for the expenses incurred as set forth in this Agreement in an amount of money not to exceed the amount set forth in this Agreement. Such sum shall be expended and paid by City to Organization on a reimbursement basis for expenses actually incurred and paid by Organization during the term of this Agreement for the cost categories appearing in **EXHIBIT B**, as described in subsection B below.
- 2) Payments to Organization shall be made within thirty (30) days of:
 - a. Receipt by City of statement or statements in a form approved by City specifying in detail the costs incurred by and paid by Organization during the month for which payment is requested; and,
 - b. Documents evidencing these costs, including but not limited to, paid invoices, and the determination by City, in its sole discretion, that expenses for which Organization seeks reimbursement can properly be paid under this Agreement and such statement(s) and supporting documents reasonably evidencing that the expenses have been incurred and paid by supporting documents reasonably evidencing that the expenses have been incurred and paid by supporting documents reasonably evidencing that the expenses have been incurred and paid by Organization. In making such determination, City may, but need not, rely upon the certification by Organization that the items appearing on said statement and supporting documents are eligible items for reimbursement under this Agreement. Such determination by City shall in no way constitute a waiver by City of its right to recover from Organization the amount of money paid to Organization on any items which is not eligible for payment under this Agreement.

**CONTRIBUTION AGREEMENT
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
SANTA CLARA METHODIST RETIREMENT FOUNDATION, INC.**

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting the Organization's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Organization shall provide and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$1,000,000 Each Occurrence
\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal Injury

2. Exact structure and layering of the coverage shall be left to the discretion of Organization; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Organization to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Organization and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Organization included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Organization or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Organization's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Organization shall contain language or be endorsed to contain wording making it primary

insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Organization's insurance.

3. Cancellation.

- a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
- b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Organization and City agree as follows:

1. Organization agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Organization, provide the same minimum insurance coverage required of Organization, except as with respect to limits. Organization agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Organization agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Organization agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Organization for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

3. The City reserves the right to withhold payments from the Organization in the event of material noncompliance with the insurance requirements set forth in this Agreement.

F. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Organization, and each and every subcontractor (of every tier) shall, at its sole cost and expense, provide and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Organization shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

G. EVIDENCE OF COMPLIANCE

Organization or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Organization shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.
City of Santa Clara [Housing & Community Services]

Telephone number: 951-766-2280
Fax number: 770-325-0409
Email address: ctsantaclara@ebix.com

H. QUALIFYING INSURERS

All of the insurance companies providing insurance for Organization shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

**CONTRIBUTION AGREEMENT
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
SANTA CLARA METHODIST RETIREMENT FOUNDATION, INC.**

**EXHIBIT D
SPECIAL GRANT CONDITIONS**

The Organization, its contractors and subrecipients shall comply with the policies, guidelines and requirements of OMB Uniform guidance at 2 CFR Part 200 the Uniform Administrative requirements, as well as all state laws, regulations and department guidelines applicable to the activities set forth.

SECTION 1 GENERAL GRANT CONDITIONS

- 1.01 Definitions. As used herein, “HUD” means United States Department of Housing and Urban Development. “Project Area” for the purposes of this **EXHIBIT D** means the City of Santa Clara.
- 1.02 Compliance with Applicable Federal Regulations. Organization agrees to comply with the requirements of Title 24 CFR Part 570, including subpart K of these regulations, except that (1) the Organization does not assume the City’s environmental responsibilities described in 24 CFR § 570.604; and (2) the Organization does not assume the City’s responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Organization also agrees to comply with all other applicable Federal, state and local laws, regulations and policies governing the funds provided under this Agreement. The Organization further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.
- 1.03 Applicable Federal Civil Rights Laws and Executive Orders. In providing the services and work set forth in this Agreement, Organization will carry out its work in a manner that will permit full compliance by City and strict adherence by Organization with the following:
- a. Title VI of the Civil Rights Act of 1964, which provides that no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance; and
 - b. The Housing and Community Development Acts of 1974 and 1977, as amended, which provide that no person in the United States shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available pursuant to said acts; and

- c. Title VIII of the Civil Rights Act of 1968 (The Fair Housing Act) which prohibits discrimination in the sale, rental, and financing of housing and the provision of brokerage services because of race, color, religion, sex, sexual orientation, actual or perceived gender identity, national origin, handicap, or familial status; and
- d. Executive Order 11063, as amended by Executive Order 12259, which provides for equal opportunity in housing and related facilities provided by federal financial assistance. This order and its implementing regulations require the Department of Housing and Urban Development to take all actions necessary to prevent discrimination because of race, color, religion, sex, or national origin in the use, occupancy, sale, leasing, rental or other disposition of residential property assisted with Federal loans, advances, grants or contributions; and
- e. Executive Order 11246, (as amended by Executive Orders 11375 and 12086 and further amendments) Equal Opportunity Under HUD Contracts and HUD-assisted Construction Contracts, which requires that City and Organization, and their respective subcontractors, agree not to discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, sexual orientation, actual or perceived gender identity, or national origin; and
- f. Section 3 of the Housing and Community Development Act of 1968 Pertaining to Employment Opportunities for Lower-Income Persons (12 U.S.C. 1701u), requires that, to the greatest extent feasible on projects financed by HUD, a subrecipient must:
 - i. Provide 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 persons residing in the Santa Clara metropolitan area with household income that is at or below 80% AMI of the Santa Clara metropolitan area as defined by HUD. Where feasible, priority should be given to residents within the service area of the Project or the neighborhood in which the Project is located who have household income that is at or below 80% AMI of the Santa Clara metropolitan area as defined by HUD, and to participants in other HUD programs who have household income that is at or below 80% AMI of that area; and
 - ii. Award contracts for work undertaken in connection with 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 persons residing within the metropolitan area in which the CDBG-funded

Project is located and have household income that is at or below 80% AMI of the Santa Clara metropolitan area as defined by HUD. Where feasible, priority should be given to business concerns that provide economic opportunities to residents within the service area or the neighborhood in which the Project is located who have household income that is at or below 80% AMI of the Santa Clara metropolitan area as defined by HUD, and to participants in other HUD programs who have household income that is at or below 80% AMI of that area; and

- iii. Self-certify whether they are a Section 3 business, employs Section 3 residents, or subcontracts with business that provide opportunities to low-income persons when an award of \$100,000 or more of HUD funding is provided for housing rehabilitation, housing construction, or other public construction projects, and/or \$100,000 or more to subcontractors: and
- iv. At a minimum, provide documentation on federal compliance, reporting and outreach efforts; and
- g. Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and implementing regulations when published which specify that no otherwise qualified individual shall, solely by reason of his or her handicap, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving Federal assistance; and
- h. The Age Discrimination Act of 1975 (Pub. L. 94-135), as amended, and implementing regulations when published for effect which provides that no person shall be excluded from participation, denied program benefits, or subjected to discrimination on the basis of age under any program or activity receiving Federal assistance; and
- i. Presidential Executive Order 13166 (“Improving Access to Services for Persons with Limited English Proficiency”), and
- j. The requirements relating to Minority-Owned and Women-Owned Business Enterprises set forth in Executive Order No. 11625 of October 13, 1971, 36 Fed. Reg. 19967, as amended by Executive Order No. 12007 of August 22, 1977, 42 Fed. Reg. 42839; and Executive Order No. 12432 of July 14, 1983, 48 Fed. Reg., 32551; and Executive Order No. 12138 of May 18, 1979, 44 Fed. Reg. 29637, a subrecipient must exercise affirmative outreach efforts when soliciting bids for service or construction when the Federal funds received by the subrecipient or subcontractor exceeds \$10,000 and when the subrecipient or subcontractor is a for-profit organization/ business; and

- k. The Uniform Federal Accessibility Standards set forth in 24 CFR Part 40, Appendix A; and
- l. Americans with Disabilities Act of 1990 (ADA), which prohibits discrimination on the basis of disability in employment and in public accommodations and commercial facilities and defines the range of conditions that qualify as disabilities, and the reasonable accommodations that must be made to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for persons with disabilities. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993, that are readily accessible to and usable by individuals with disabilities. Further the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities where such removal is readily achievable – that is easily accomplishable and able to be carried out without much difficulty or expense; and,
- m. The provisions of 24 CFR Part 24, relating to the employment, engagement of services, awarding of contracts, or funding of any grantee or sub during any period of debarment, suspension, or placement in ineligibility status; and,
- n. Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846 and implementing regulations at 24 CFR Part 35; and,
- o. Section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et. seq.*) This law provides that any grant under section 106 shall be made only if the City certifies to the satisfaction of the Secretary of HUD that the Organization will, among other things, affirmatively further fair housing; and,
- p. Section 109 of Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et. seq.*, particularly 42 U.S.C. 6101 *ets. seq.*, and 29 U.S.C. 794) and further amendments, which mandates that no person on the grounds of race, color, national origin, sex, sexual orientation, actual or perceived gender identity, age or religion shall be excluded from participation, denied the benefits of, or otherwise be subject to discrimination under any activity funded in whole or part with CDBG funds; and,
- q. Architectural Barriers Act of 1968 requires that federally funded buildings and other facilities, as defined in 24 CFR § 40.2 and 40 CFR § 101-19.602(2), to be designed, constructed, or altered in accordance with standards that ensure accessibility to, and use by, physically handicapped people; and,
- r. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must

include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence; and,

s. Uniform Accessibility Standard, at 24 CFR Part 40, Appendix A, as the relate to substantial rehabilitation or conversion; and,

t. Procurement of Recovered Materials: See 2 CFR 200.322.

1.04 Relocation and Real Property Acquisition. Organization shall comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) and 24 CFR § 570.606(b); and (b) the requirements of 24 CFR §570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan (Plan) under section 104(d) of the HCD Act. Under the URA and the Plan, the subrecipient must provide relocation assistance to persons (families, individuals, businesses, non-profit organizations and farms) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted project. All property occupants must be issued certain notices on a timely basis. The Plan also required the one-for-one replacement of any occupied or vacant occupiable low/moderate-income housing that is demolished or converted to another use in connection with a CDBG-assisted project. Finally, the Plan requires the identification of the steps that will be taken to minimize displacement.

1.05 Political Reform Act. Organization shall comply with the applicable provisions of the Political Reform Act of 1974, as amended, relating to conflicts of interest (codified at California Government Code Section 87000, *et seq.*) Organization will promptly advise City of the facts and circumstances concerning any disclosure made to it or any information obtained by it relating to conflicts of interest.

1.06 Flood Disaster Protection. Notwithstanding any other provision of this Agreement, Organization shall comply with the Flood Disaster Protection Act of 1973, as amended (P.L. 93-234), and the standards issued thereto. No portion of the moneys to be paid to Organization pursuant to this Agreement shall be used for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in an area not in compliance with the requirements for participation

in the National Flood Insurance Program pursuant to Section 201(d) of said Act; and the use of any of said moneys for such acquisition or construction in such identified areas in communities then participating in the National Flood Insurance Program shall be subject to the mandatory purchase of flood insurance requirements of Section 102(a) of said Act.

Any contract or agreement for the sale, lease or other transfer of land acquired, cleared or improved with assistance provided under this Agreement shall contain, if such land is located in an area identified by the Secretary of HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001, et seq., provisions obligating the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(a) of the Flood Disaster Protection Act of 1973, as amended. Such provisions shall be required notwithstanding the fact that the construction on such land is not itself funded with assistance provided under this Agreement.

- 1.07 Equal Employment Opportunity. In providing the work and services herein specified, Organization shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Organization shall take action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, actual or perceived gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Organization shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or the City setting forth the provisions of this nondiscrimination clause. Organization shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, actual or perceived gender identity, or national origin. Organization shall incorporate the foregoing requirements of this paragraph 1.07 in all of its contracts for program work, and will require all of its contractors for such work to incorporate such requirements in all subcontracts for program work.
- 1.08 Prohibition of and Elimination of Lead-Based Paint Hazard. Notwithstanding any other provision, Organization agrees to comply with the regulations issued by the Secretary of HUD set forth in 24 CFR § 570.608 and all applicable rules and orders issued thereunder which prohibit the use of lead-based paint in residential structures undergoing federally assisted construction or rehabilitation and require the elimination of lead-based paint hazards. Every contract or subcontract, including painting, pursuant to which such federally assisted construction or

rehabilitation is performed, shall include appropriate provisions prohibiting the use of lead-based paint.

1.09 Compliance With Clean Air and Water Acts. This Agreement is subject to 42 U.S.C. 1857, *et seq.*, and 33 U.S.C. 1251 *et seq.*, and the regulations issued pursuant thereto. Therefore, Organization agrees as follows:

- a. Organization stipulates that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR § 15.20; and,
- b. Organization agrees to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in said Sections 114 and 308, and all regulations and guidelines issued thereunder; and,
- c. Organization stipulates that as a condition for the award of the contract prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities; and,
- d. Organization agrees that criteria and requirements in subparagraphs (a) through (d) of this section 1.09 will be included in every non-exempt subcontract and Organization shall take such action as the City or HUD requires as a means of enforcing such provisions.

In no event shall any amount of the assistance provided under this Agreement be utilized with respect to a facility which has given rise to a conviction under Section 113(c)(1) of the Clean Air Act or Section 309(c) of the Federal Water Pollution Control Act.

1.10 Federal Labor Standards (i.e., Davis Bacon Act) Provisions. Except with respect to the rehabilitation of residential property designed for residential use for less than eight (8) families, Organization and all subrecipients engaged under contracts in excess of Two Thousand Dollars (\$2,000) for the construction, completion or repair of any building or work financed in whole or in part with assistance provided under this Agreement, shall comply the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of

Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

Organization shall not award any contract or subcontract which is otherwise in compliance with this Agreement to any person or subcontractor who is at the time ineligible under the provisions of any applicable regulations of the Department of Labor to receive an award of such contract.

- 1.11 Nondiscrimination Under Title VI of the Civil Rights Act of 1964. Organization under this Agreement shall be subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and HUD regulations with respect thereto including the regulations under 24 CFR Part 1. In the sale, lease or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, Organization shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination upon the basis of race, color, religion, sex, sexual orientation, actual or perceived gender identity, or national origin, in the sale, lease or rental, or in the use of occupancy of such land or any improvements erected or to be erected thereon, and providing that Organization and the United States are beneficiaries of and entitled to enforce such covenant. Organization, in providing the services and work it is to provide, pursuant to this Agreement, agrees to take such measures as are necessary to enforce such covenant and will not itself so discriminate.
- 1.12 Interest of Certain Federal Officials. No member of, or Delegate to, the Congress of the United States, and no Resident Commissioner, shall be admitted to any share or part of this Agreement or to any benefit arising from same.
- 1.13 Conflict of Interest. Under 24 CFR Part 570.66, no officer, employee or agent of City or Organization who exercises any functions or responsibilities with respect to the CDBG Program or to the services and work to be performed by Organization pursuant to this Agreement, during such officer's, employee's or agent's tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

Organization shall incorporate or cause to be incorporated in every contract required to be in writing a provision prohibiting such interest pursuant to the purposes of this section.

- 1.14 Prohibition Against Payments of Bonuses or Commissions. The assistance provided under this Agreement shall not be used in the payment of any bonus or commission for the purpose of obtaining HUD approval of the application for such assistance, or HUD approval of applications for additional assistance, or any other approval or concurrence of HUD required under this Agreement, Title I of the Housing and Community Development Acts of 1974 or 1977, or HUD regulations with respect thereto; provided, however, that reasonable fees or bona fide technical, consultant, managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as program costs.
- 1.15 Copyrights. If this Agreement results in a book or other copyrightable material, the author is free to copyright the work, but HUD reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, all copyrighted material and all material which can be copyrighted.
- 1.16 Patents. Any discovery or invention arising out of or developed in the course of work aided by this Agreement shall be promptly and fully reported to City and HUD for determination by HUD as to whether patent protection on such invention or discovery will be sought and how the rights in the invention or discovery, including the rights under any patent issued thereon, shall be disposed of and administered, in order to protect the public interest.
- 1.17 Political Activity.
 - a. Partisan Activity Prohibited. No funds provided in this Agreement shall be used for any partisan political activity or to further the election or defeat of any candidate for public office; nor shall they be used to provide services, or for the employment or assignment of personnel in a manner supporting or resulting in the identification of programs conducted pursuant to this Agreement with the following: (1) any partisan or nonpartisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office; (2) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election; or (3) any voter registration activity.

Participants employed in the administration of the CDBG Plan and/or Program, and participants whose principal employment is in connection with an activity financed by the CDBG Program or its proceeds are subject to limitation on political activities under the Hatch Act (5 U.S.C. 1502(a), 18

U.S.C. 595). All participants may take part in non-partisan activities outside working hours

b. Lobbying Prohibited.

- i. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Organization, 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.
- ii. 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, the Organization shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- iii. The Organization shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. 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.

1.18 Guidelines on Church-Related Activities. In addition to, and not in substitution for, other provisions of this Agreement regarding the provision of public services with CDBG funds pursuant to Title I of the Housing and Community Development Act of 1974, as amended, the Organization agrees that, in connection with the public services performed under this Agreement:

- a. It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

- b. It will not discriminate against any persons applying for public services on the basis of religion and will not limit such services or give preference to persons on the basis of religion; and,
- c. It will provide no inherently religious activities, such as worship, religious instruction, or religious proselytizing, as part of the programs or services funded under this Agreement and will only conduct such activities in a separate time or place; and,
- d. It will exert no other religious influence in the provision of public services and participation in religious activities by any beneficiaries of those services shall be voluntary; and,
- e. The funds received under this Agreement shall not be used to construct, rehabilitate, or restore any facility which is owned by the Organization and in which the public services are to be provided, provided that, minor repairs may be made if such repairs (1) are directly in a structure used exclusively for non-religious purposes, and (2) constitute in dollar terms only a minor portion of expenditure for the public services.
- f. Construction or Rehabilitation of Facilities. Block grant fund recipients shall not use any funds to construct, rehabilitate, maintain, or restore religious structures (including those which may be historic properties) currently used for religious purposes. Block grant funds shall not be used to construct, rehabilitate, maintain, or restore structures or other real property owned by “pervasively sectarian” organizations. Block grant funds shall not be used to assist a religious organization in acquiring property. These prohibitions apply whether or not the property is used for religious services or instruction or is used in any other way for religious activities.
- g. Public Services. Block grant funds may be used for the provision of public services under the following conditions:
 - i. The public services provided are exclusively non-religious in nature and scope; and,
 - ii. There are no religious services, proselytizing, instruction, or any other religious influences in connection with the public services; and,
 - iii. There is no religious discrimination in terms of employment or benefits under the public services; and,
 - iv. The CDBG funds may be used only for the provision of public services and not for the construction, rehabilitation or restoration of any facility owned by the religious organization where the services are to be

provided. A narrow exception to this prohibition is that minor repairs may be made where such repairs (a) are directly related to the public services, (b) are located in a structure used exclusively for non-religious purposes, and (c) constitute in dollar terms a minor portion of the CDBG expenditure for the public services.

- 1.19 Resident Aliens. (24 CFR § 570.613) Certain newly legalized aliens, as described in 24 CFR Part 49, are not eligible to apply for the benefits under covered activities funded by the CDBG Program. “Covered activities” are activities meeting the requirements of 24 CFR § 570.208(a) that either (1) have income eligibility requirements limiting benefits exclusively to low- and moderate-income persons, or (2) are targeted geographically or otherwise to primarily benefit low- and moderate-income persons (except for activities that benefit the public at large), and provide benefits on the basis of an application.
- 1.20 Environmental Requirements. (24 CFR § 470.604) Organization is not allowed to incur program expenses until the City has performed an environmental review of the proposed activities, received the release of funds, and provided the Organization with formal clearance to initiate them, along with directives for any action necessary to mitigate negative environmental impacts (24 CFR Part 58).
- 1.21 Historic Preservation. Organization shall not violate provisions of the Historic Preservation Act and related laws and Executive Orders. Before any commitments are made to make any physical improvements or alterations or demolition of any building, Organization shall receive assurances from the City that the Organization is in compliance.
- 1.22 If Organization receives State or City funds, Organization shall, in the use of those State or City funds adhere to the applicable Federal laws, regulations, policies, guidelines or requirements, herein specified, only insofar as adherence thereto would not be prohibited by valid City or State laws, regulations, policies, guidelines or requirements.

SECTION 2. FINANCIAL OBLIGATIONS OF ORGANIZATION

- 2.01 Fiscal Responsibilities of Organization. Organization agrees to comply with 2 CFR § 200.49 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. Organization shall:
 - a. Appoint and submit to City, the name of a fiscal agent who shall be responsible for the financial and accounting activities of the Organization, including the receipt and disbursement of Organization funds.

- b. Establish and maintain a system of accounts that shall be in conformance with generally accepted principles of accounting for budgeted funds. Such system of accounts shall be subject to review and approval of City.
- c. Document all costs by maintaining complete and accurate records of all financial transactions, including but not limited to contracts, invoices, time cards, cash receipts, vouchers, cancelled checks, bank statements and/or other official documentation evidencing in proper detail the nature and propriety of all charges.
- d. Submit to the City, within ten (10) working days of the end of the preceding month, requests for reimbursement, together with documentation required by City.
- e. Perform an independent fiscal audit annually in conformance with the generally accepted standard accounting principles. Such audits must identify the total funds received and disbursed, and funds granted and expended relating to this Agreement, in a form sufficient to identify, track, and correlate such funds. The Costs for such audits shall be at Organization's expense, unless otherwise provided for in this Agreement. Copies of the completed audits must be provided to the City.
- f. Be liable for repayment of disallowed costs. Disallowed costs may be identified by the City through audits, monitoring, or other sources. Organization shall be afforded the opportunity to respond to any adverse findings, which may lead to disallowed costs. The City shall make the final determination of disallowed costs, subject to provisions of 2 CFR Part 200.
- g. Administer all programs in conformance with 2 CFR Part 200 Subpart E, Cost Principles. These principles shall be applied for all costs incurred whether charged in a direct or indirect basis.
- h. If indirect costs are charged, the Organization will develop an indirect cost allocation plan for determining the appropriate Organization's share of administrative costs and shall submit such plan to the City for approval.
- i. Certify insurability subject to City approval as outlined in **EXHIBIT C** entitled "INSURANCE".
- j. Submit to HUD or City at such times and in such forms as HUD or City may require, such statements, records, reports, data, and information pertaining to matters covered by this Agreement.
- k. Submit for approval by the City any lease agreement either contemplated or in effect, which would be funded under this Agreement.

2.02 Records, Reports and Audits of Organization. Organization shall comply with all applicable federal Uniform Administrative Requirements as delineated in 24 CFR § 570.502:

- a. Establishment and Maintenance of Records. Organization shall maintain records, including but not limited to, books, financial records, supporting documents, statistical records, personnel, property, and all other pertinent records sufficient to reflect properly:
 - i. All direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred to perform this Agreement, and
 - ii. All other matters covered by this Agreement. Such records shall be maintained in accordance with requirements now or hereafter prescribed by the City.

- b. Preservation of Records. Organization shall preserve and make available its records:
 - i. For the period of five (5) years after the affordability period under this Agreement; or,
 - ii. For such longer period, if any, as may be required by applicable law; or,
 - iii. If this Agreement is completely or partially terminated, for a period of five (5) years from the date of any resulting final settlement.

- c. 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:
 - i. Records providing a full description of each activity undertaken; and,
 - ii. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG Program; and,
 - iii. Records required to determine the eligibility of activities; and,
 - iv. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance; and,
 - v. Records documenting compliance with the fair housing and equal opportunity components of the CDBG Program; and,

- vi. Financial records as required by 24 CFR § 570.502 and 2 CFR Part 200; and,
 - vii. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.
- d. Examination of Records; Facilities. At any time during normal business hours, and as often as may be deemed necessary, Organization agrees that HUD and/or City, and/or any of their respective authorized representatives shall:
- i. For a period of five (5) years after the affordability period under this Agreement; or,
 - ii. For such longer period as may be required by applicable law; or,
 - iii. If this Agreement is completely or partially terminated, for a period of five (5) years from date of any resulting settlement; or
 - iv. Have access to and the right to examine its plants, offices, and facilities engaged in performance of this Agreement and all its records with respect to all matters covered by this Agreement. Organization also agrees that HUD and/or City, or any of their respective authorized representatives shall have the right to audit, examine, and make excerpts or transcripts of and from such records, and to make audits of all contracts and subcontracts, invoices, payrolls, records of personnel, conditions of employment, materials, and all other data relating to matters covered by this Agreement. Notwithstanding anything in this Agreement to the contrary for monitoring purposes, City shall not require access to any information of Organization mutually determined by the parties hereto to be proprietary.
- e. Audits. 2 CFR § 200.500 sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards.
- i. Funds may be set aside in Organization's budget in an amount equal to City's fair share of Organization's cost of an independent audit, if required, with prior approval from City. A separate line item will be established.
 - ii. Organization shall enter into an agreement with an independent public accountant certified to practice in the State of California no later than sixty (60) days before the end of this Agreement calling for an audit to be done for the entire year. The audit must be in conformance with the applicable funding source.

- iii. The audit must be completed and sent to the City's Department of Housing staff within one hundred fifty (150) days from the end of Organization's fiscal year.
- iv. Audit Standards. The independent fiscal audit shall conform to generally accepted governmental auditing principles. Such audits shall identify the funds received and disbursed under this Agreement and include the following components:
 - (a) Balance Sheet or Statement of Financial Position;
 - (b) Statement of Support, Revenue, and Expenses and Changes in Fund Balances or Statement Activities;
 - (c) Statement of Functional Expenses;
 - (d) Statement of Auditor's Report;
 - (e) Communication of Internal Control Related Matters Identified in an Audit (Management Letter) from Auditor;
 - (f) Organization shall also submit to the agency a written management response to the findings of the Internal Control Matters.
- f. Single Audits. 2 CFR § 200.501 states that Organizations that expend \$750,000 or more of Federal financial assistance in a fiscal year (in aggregate, from all funding sources), in addition to conducting normal financial audit procedures, the Organization's independent public accountant certified to practice in the State of California shall perform tests to ascertain that:
 - i. Expenditures submitted for reimbursement are allowable under 2 CFR Part 200; and,
 - ii. Expenditures are in compliance with the grant agreements between the City and Organization; and,
 - iii. Applicable laws and regulations. Further, the independent public accountant certified to practice in the State of California shall render an opinion as to whether the Expenditures complied with the Single Audit Act of 1984 and Appendix XI to 2 CFR Part 200 — Compliance Supplement;
 - iv. The single audit must include the following components:

- (a) *Balance* Sheet or Statement of Financial Position;
 - (b) Statement of Support, Revenue and Expenses and Changes in Fund Balances or Statement Activities;
 - (c) Statement of Functional Expenses
 - (d) Schedule of Expenditures of Federal Awards;
 - (e) Independent Auditor's Report on the Financial Statement and Schedule of Expenditures of Federal Awards;
 - (f) Auditor's Report on Internal Control over Financial Reporting and on Compliance and Other Matters;
 - (g) Auditor's Report on Compliance with Requirements Applicable to Major Programs and on Internal Control over Compliance;
 - (h) Schedule of Findings and Questioned Costs;
 - (i) Summary of Schedule of Prior Audit Findings;
 - (j) Corrective Action Plan;
 - (k) Data Collection Form.
- g. Organization's independent public accountant, certified to practice in the State of California, shall perform reviews of Organization internal control systems and Organization's compliance with applicable laws, regulations and requirements of this Agreement.
- The independent public accountant shall issue a report on the financial statements and the Schedule of Governmental Financial Assistance, a report on the study and evaluation of internal controls and a report on Organization compliance. The three reports may be bound into a single report or presented at the same time as separate documents.
- h. Should Organization not enter into an agreement with an independent public accountant certified to practice in the State of California, or should an audit not be done on a timely basis, City, at its sole discretion, may enter into an agreement with an independent public accountant certified to practice in the State of California to perform the audit.
- i. City Audits. City may perform an independent audit. Such audits may cover program as well as fiscal matters. Organization will be afforded an opportunity

to respond to any audit findings and have the responses included in the final audit report. Costs of such audits will be borne by City.

- j. Disallowed Costs. Organization is liable for repayment of disallowed costs as determined by City, in its sole discretion, and/or HUD. Disallowed costs may be identified through audits, monitoring or other sources. Organization shall be afforded the opportunity to respond to any adverse findings which may lead to disallowed costs. Director shall make the final determination of disallowed costs, subject to provisions of 2 CFR Part 200 and applicable HUD regulations.

SECTION 3. OTHER REQUIREMENTS OF GRANTEE

- 3.01 Client Data. The Organization 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.
- 3.02 Disclosure. The Organization understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the Organization's or subrecipient's responsibilities with respect to services provided under this Agreement, 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.

To the extent allowed under law, City agrees to maintain the confidentiality of any information regarding applicants for services offered by the Program pursuant to this Agreement or their immediate families which may be obtained through application forms, interviews, tests, reports, from public agencies or counselors, or any other source. Without the written permission of the applicant, such information shall be divulged only as necessary for purposes related to the performance or evaluation of the services and work to be provided pursuant to this Agreement, and then only to persons having responsibilities under the Agreement, including those furnishing services under the Program through subcontracts.

- 3.03 Close-outs. The subrecipient's obligation to the City shall not end until all close-out requirements are completed pursuant to 24 CFR § 570.509. 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.

- 3.04 Program Income. The Organization 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 Agreement. 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 Agreement 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.
- 3.05 Indirect Costs. If indirect costs are charged, the Organization will develop an indirect cost allocation plan for determining the appropriate Organization's share of administrative costs and shall submit such plan to the City for approval, in a form specified by the City.
- 3.06 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 2 CFR Part 200 and 24 CFR §§ 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:
- a. 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.
 - b. 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 the affordability period or such longer period of time as the City deems appropriate. If the Organization 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 ten-year period or such longer period of time as the City deems appropriate.
 - c. 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.

- 3.07 Hatch Act. The Organization 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.
- 3.08 HMIS Participation. All agencies providing homeless services in receipt of funding from the City's CDBG Program are required to fully participate in the Homeless Management Information System ("HMIS") and work closely with the County of Santa Clara Office of Supportive Housing ("CSC OSH"), to ensure the agency has the mechanisms and staffing in place to use the system appropriately and in a timely manner. Funded agencies are required to collect demographic information on all clients served by the funded projects, the services provided, and consent to release the information to CSC OSH and the City's Housing and Community Services Division.

Funded projects must utilize all appropriate aspects of HMIS in order to generate the statistical information required for reporting to the City on all universal and program level elements of the HUD Data Standards. These statistical reports must be generated directly out of HMIS. No adjustments to the HMIS reports will be accepted and it is therefore incumbent on the agency to ensure that the information they put into HMIS is accurate and up to date. City will measure performance and outcomes relating to these funded projects through the use of the HMIS statistical data, based on the HUD data elements, or other reporting requirements as determined by the City. The City will request from the HMIS Administrator, acknowledgement of the recipient agencies' certificate of compliance with HUD privacy and security standards, acknowledgement of use of the Shelter Point program, and statistics on the percentage of Universal and Top Level Program data captured.

- 3.09 Language Access Plan (LAP). Organization shall fully implement and comply with the Language Access Plan ("LAP") as approved by City to ensure that limited English proficient clients have equal access to community programs and services.
- 3.10 Organization shall include in all outreach and marketing materials, including public websites, an affirmative statement that it will provide services or benefits to all persons, race, sex, color, age, religion, actual or perceived gender identity, sexual orientation, disability, ethnic or national origin, or familial status.

**CONTRIBUTION AGREEMENT
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
SANTA CLARA METHODIST RETIREMENT FOUNDATION, INC.**

EXHIBIT E

**ETHICAL STANDARDS FOR CONTRACTORS SEEKING TO ENTER INTO
AN AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA, AND
AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS**

1.01 Ethical Standards For Contractors.

Termination of Agreement for Certain Acts.

A. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:

1. If a Contractor¹ does any of the following:

- a. Is convicted² of operating a business in violation of any Federal, State or local law or regulation.
- b. Is convicted of a crime punishable as a felony involving dishonesty³;
- c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;
- d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a city contractor or subcontractor; and/or,
- e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.

¹For purposes of this Agreement, the word "Consultant" (whether a person or a legal entity) also refers to "Contractor" and means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

² For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

³ As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

2. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with the Contractor can be imputed to the Contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the Contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.
- B. The city may also terminate this Agreement in the event any one or more of the following occurs:
1. The City determines that Contractor no longer has the financial capability⁴ or business experience⁵ to perform the terms of, or operate under, this Agreement; or,
 2. If City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, Contractor's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to provide and maintain bonds and/or insurance policies required under this Agreement.
- C. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process or a contract is terminated pursuant to these provisions, Contractor may appeal the City's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

⁴ Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Contractor.

⁵ Loss of personnel deemed essential by the City for the successful performance of the obligations of the Contractor to the City.

AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS

I hereby state that I have read and understand the language, entitled “Ethical Standards” set forth in **Exhibit E**. I have the authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records, and I have made appropriate inquiry of those individuals potentially included within the definition of “Contractor” contained in Ethical Standards at footnote 1.

Based on my review of the appropriate documents and my good-faith review of the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to said “Contractor” category [i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.] has been convicted of any one or more of the crimes identified in the Ethical Standards within the past five (5) years.

The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

SANTA CLARA METHODIST RETIREMENT FOUNDATION, INC.

a California non-profit corporation

By: _____
Signature of Authorized Person or Representative

Name: Priscilla J. Haynes

Title: Executive Officer

ORGANIZATION

NOTARY’S ACKNOWLEDGMENT TO BE ATTACHED

Please execute the affidavit and attach a notary public’s acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity’s complete legal name and the title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

**CONTRIBUTION AGREEMENT
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
SANTA CLARA METHODIST RETIREMENT FOUNDATION, INC.**

EXHIBIT F
GUIDELINES FOR MINORITY-OWNED AND WOMEN-OWNED
BUSINESS ENTERPRISES (MBE/WBE)

Section 281 of the National Affordable Housing Act requires each contractor to prescribe procedures to establish and oversee a minority outreach program for the receipt of all federal housing and community development funds including CDBG, HOME, HOPWA, ESG, Section 108, and BEDI grants.

The program shall include minority and women-owned businesses in all contracting activities entered into by the contractor to facilitate the provision of affordable housing authorized under this Act or any other federal housing law applicable to such jurisdiction.

Definitions:

- **The City:** The primary Organization of federal housing and community development funds is the City of Santa Clara.
- **Developer/Contractor/ Subrecipient:** The individual, company, corporation, partnership, business, or other entity that enters into a contract with the City of Santa Clara to carry out the work, service, or project specified in connection with receiving a federal HUD grant.
- **Subcontractor:** Any entity which has agreed to undertake a portion of the developer/contractor/ subrecipient general contract.
- **Minority-Owned Business Enterprise (MBE):** Business primarily (51%) owned, operated, and controlled by one or more members of the following race/ethnicity: Pacific Islander, American Native, African American/Black, American Indian/Alaskan Native, Hawaiian/Pacific Islander, Asian, or Hispanic.
- **Women-Owned Business Enterprise (WBE):** Primarily (51%) owned by one or more females.

Required Program Participants' Responsibility:

- 1 The City will ensure that when soliciting bids for service, construction, or maintaining "contractor lists" for developers/contractor/ subrecipient, the City will use the outreach provisions described under "Outreach Criteria."
- 2 The City will require its developers/contractors/ subrecipient to carry out the provisions of MBE/WBE when soliciting bids of subcontractors.

Applicability:

- When the City makes a grant to a developer/contractor/ subrecipient for services or construction.
- When a developer/contractor/subrecipient's subcontracts for services or construction.
- When the grant received by the developer/contractor/ subrecipient, or subcontractor exceeds \$10,000.
- When the developer/contractor/ subrecipients or subcontractor is a for-profit organization/business, or a nonprofit hire a for-profit subcontractor.

Steps to Meeting the Reporting Requirements:

1. If applicable, each developer/contractor/ subrecipient will need to self-certify to the city whether it is an MBE/WBE. A form will be provided to each agency awarded funds and reported annually by the developer/contractor/ subrecipients.
2. Each developer/contractor/ subrecipient will ensure that every subcontractor also self-certifies whether it is a MBE/WBE and this information is reported annually.
3. The city will follow the guidelines for "Outreach" when soliciting bids for developer/contractor/ subrecipient.
4. Each developer/contractor/ subrecipient will follow the guidelines for "Outreach" when soliciting bids for subcontractors and will report these efforts annually to the City.

Required Outreach Criteria:

- The Housing and Community Services Division will maintain a list of local MBE/WBE companies and addresses and distribute to all developers/contractors/ subrecipients.
- When developers/contractors/ subrecipient are soliciting bids from subcontractors, they will include in any notice to local newspaper that "Women and Minority Owned Businesses are strongly encouraged to apply." Developers/contractors/subcontractors, when feasible, are strongly encouraged to consider posting in Spanish and Vietnamese newspapers.
- When the Housing and Community Services Division announces Notices of Funding Availability or Community Development Block Grants application availability, efforts will be made to include in local newspaper posting that "Women and Minority Owned Businesses are strongly encouraged to apply" and printed, when feasible, in Spanish and Vietnamese newspapers.

**MINORITY BUSINESS-OWNER ENTERPRIZE/
WOMEN BUSINESS-OWNER ENTERPRIZE (MBE/WBE)
(List of Prime and Subcontractor)**

Grantee/ Contractor Name:									
Project Number & Project Name:									
Contact Person:					Phone #:				
Reporting Period: Oct. 1. 20__ - Sept 30, 20__					Program Code:				
Project # or HUD # or dwelling unit #	Prime or Subcontractor (P or S)	Prime or Subs Name	Prime/Sub. Address (City/State/ Zip)	Amount of Prime or Sub. Contract	Type of Trade Code (Select Code# below) 7a.	Prime or Subs. Business Racial/Ethnic (See Code # below) 7b.	Woman Owned Business (Yes or No) 7c.	Sec. 3 (Yes/No) 7d.	Prime or Sub (ID # / Lic. #)
7a: Type of Trade Codes: (Select One) 1 = New Construction 2 = Substantial Rehab. 3 = Repair 4 = Service 5 = Management 6 = Professional 7 = Tenant Services 8 = Education/Training 9 = Architect/Engineer 10 = Other			7b: Racial/Ethnic Codes: (select one) 1 = White Americans 2 = Black Americans 3 = Native Americans 4 = Hispanic Americans 5 = Asian/Pacific Ameri. 6 = Hasidic Jews 7c: MBE/WBE: (Yes/No) • MBE: Business primarily (51%) owned, operated and controlled by one or more members of the following race/ethnicity: Pacific Islander, American Native, African American/Black, American Indian/Alaskan Native, Hawaiian/Pacific Islander, Asian, or Hispanic. • WBE: Primarily owned (51%) by one or more females. 7d. Sec 3 businesses: Those individuals, companies, corporations, partnerships, businesses, or other entities that are 51% or more owned by persons residing within the Section 3 area.				5: Program Codes (Complete for Housing and Public and Indian Housing programs only): 5 = Section 202 6 = HUD-Held (Management) 7 = Public/India Housing 8 = Section 811		

**CONTRIBUTION AGREEMENT
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
SANTA CLARA METHODIST RETIREMENT FOUNDATION, INC.**

**EXHIBIT G
SECTION 3 GUIDELINES**

Responsibilities and Procedures for Carrying Out the Requirements Under Section 3 of the Housing and Urban Development Act of 1968 Pertaining to Employment Opportunities for Lower-Income Persons.

Purpose:

To ensure that, to the greatest extent feasible, projects financed by the United States Department of Housing and Urban Development (HUD) provide lower-income residents within the city the opportunity for employment and training. Additionally, the policy should ensure that awards are made to businesses located or owned by persons residing within the City.

Definitions:

- **The City:** The primary Organization of federal housing and community development funds is the City of Santa Clara.
- **Developer/Contractor/** subrecipient: The individual, company, corporation, partnership, business, or other entity that enters into a contract with the City of Santa Clara to carrying out the work, service, or project specified in connection with receiving a federal HUD grant.
- **Subcontractor:** Any entity which has agreed to undertake a portion of the developer/contractor/ subcontractor general contract.
- **Section 3 Area:** Is the entirety of the area located within the incorporated boundaries of the City of Santa Clara.
- **Section 3 resident:** An individual who resides in the Section 3 area whose family income does not exceed 80% of the area median income (AMI), or is a resident of public housing, or is a person with disabilities.
- **Section 3 businesses:** Those individuals, companies, corporations, partnerships, businesses, or other entities that are 51% or more owned by persons residing within the Section 3 area.

Required Program Participants' Responsibility:

- The City will ensure that when contracting with developers, contractors, or subrecipient, the City will use the outreach provisions described under "Outreach Criteria."

- The City will require its developers/contractors/subrecipients to carry out the provisions of MBE/WBE when soliciting bids of subcontractors.

Applicability:

- The grant from the city to the developer, contractor, or subrecipient is for housing rehabilitation, housing construction, or other public construction projects; and
- When a developer, contractor, or subrecipient receives a federal HUD grant in excess of \$200,000 from the city; or
- A subcontractor receives a grant in excess of \$100,000.

Steps to Meeting the Reporting Requirements:

1. If applicable, each developer, contractor, or subrecipient, and each subcontractor must self-certify whether they are a Section 3 business, employs Section 3 residents, or subcontracts with business that provide opportunities to low and very low-income persons. A form will be provided by the Housing and Community Services to each eligible developer, contractor, or subcontractor which will be requested to be completed annually.
2. Each developer, contractor, or subrecipient must attempt to recruit and hire Section 3 residents or subcontract with Section 3 businesses if it finds the need for additional staff to complete the project.
3. Developers, contractors, and subrecipients, who receive HUD funding, shall seek to participate in a HUD program or other programs that promote training and education of Section 3 residents. A form will be provided by the Housing and Community Services to each eligible developer, contractor, or subcontractor, which will be requested to be completed annually.

Required Outreach Criteria:

- When hiring, it is required of all developers, contractors, or subrecipient and subcontractors to attempt to recruit Section 3 residents through local media and advertisement; signs placed at the job site; and notifying community/public/private agencies that work with low-income people.
- When developers, contractors, or subrecipient are subcontracting, they should seek to recruit Section 3 businesses.
- Developers, contractors, and subrecipient, who receive HUD funding, must seek to participate in a HUD program or other program that promotes training and education of Section 3 residents.

Goals:

- The city will develop goals for the hiring, training, and recruiting of Section 3 businesses and residents once implementation and data can be collected from current Organizations. These goals will be incorporated into the City's Section 3 Plan.

Section 3 Tracking Labor Hours Report

	Labor Hours	Calculated %	Safe Harbor Benchmark Met
Total Labor Hours			
Section 3 Worker Hours		#DIV/0!	
Section 3 Target Worker Hours		#DIV/0!	
	0		

Nature of Agency Efforts

This section is required if, based on the labor hours reporting above, the reporting agency did not meet the safe harbor benchmarks.

Check all that apply. Maintain records for HUD review documented efforts

- Outreach efforts to generate job applicants who are Public Housing Targeted Workers
- Outreach efforts to generate job applicants who are Other Funding Targeted Workers.
- Direct, on-the job training (including apprenticeships).
- Indirect training such as arranging for, contracting for, or paying tuition for, off-site training.
- Technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).
- Outreach efforts to identify and secure bids from Section 3 business concerns.
- Technical assistance to help Section 3 business concerns understand and bid on contracts.
- Division of contracts into smaller jobs to facilitate participation by Section 3 business concerns.
- Provided or connected residents with assistance in seeking employment including: drafting resumes, preparing for interviews, finding job opportunities, connecting residents to job placement services.
- Held one or more job fairs.
- Provided or connected residents with supportive services that can provide direct services or referrals.
- Provided or connected residents with supportive services that provide one or more of the following: work readiness health screenings, interview clothing, uniforms, test fees, transportation.
- Assisted residents with finding child care.
- Assisted residents to apply for/or attend community college or a four-year educational institution.
- Assisted residents to apply for or attend vocational/technical training.
- Assisted residents to obtain financial literacy training and/or coaching.
- Bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.
- Provided or connected residents with training on computer use or online technologies.
- Other. Specify:

**CONTRIBUTION AGREEMENT
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
SANTA CLARA METHODIST RETIREMENT FOUNDATION, INC.**

**EXHIBIT H
AFFORDABILITY RESTRICTION AGREEMENT**

This Affordability Restriction Agreement and Covenant (“Covenant”) is entered by Santa Clara Methodist Retirement Foundation, Inc. (“Owner”) for the benefit of the City of Santa Clara (“City”) on the terms and conditions set forth below.

RECITALS

- A. Owner is the owner of certain real property located at **890 Main Street in the City of Santa Clara**, County of Santa Clara, State of California, as more particularly described in the attached ATTACHMENT A (“Property Description”).
- B. Pursuant to Grant Agreement **CDI-23-C01**, with an end date **April 30, 2024**, City has made a grant of Community Development Block Grant (“CDBG”) funds (the “Grant Award”) to the Owner for Improvements (as defined in Section 1 below) to the Property,
- C. Pursuant to 24 CFR 570.208, activities funded with grants of CDBG funds must meet one of the CDBG program’s three broad National Objectives: benefit low- and moderate-income persons, aid in the prevention or elimination of slums or blight conditions or meet community development needs having a particular urgency.
- D. The National Objective to benefit low- and moderate-income persons may be met by an activity that benefits a limited clientele, at least 51 percent of whom are low- and moderate-income persons (“Limited Clientele”).
- E. The Grant Award to the Owner is intended to satisfy the CDBG National Objective to serve a population that is generally presumed to be low- to moderate-income individuals (i.e., homeless persons). 24 CFR 570.208(a)(2)(i)(A).

- F. Pursuant to 24 CFR 570.505, where CDBG funds in excess of \$25,000 are used to acquire or improve a grantee's property, or portion thereof, that property must be used to meet the National Objective for a period of five (5) years after the grant expires. The City is extending to a total of ten (10) years after the grant expires.
- G. Consistent with 2 CFR 200 and 24 CFR 570.502, 570.503, and 570.505, as applicable, and as a condition of disbursement of CDBG funds, the Owner is required to maintain the Improvements and to maintain the intended use on the Property as described herein.
- H. As a condition of the Grant Award, the City has required the Owner to execute and record a deed of trust with assignment of rents, including exhibits thereto, which incorporate by reference this Affordability Restriction Agreement requiring the maintenance of this use against the Property.

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, the Owner agrees as follows:

1. IMPROVEMENTS

Pursuant to the Grant Award, the City of Santa Clara has made available CDBG funds for the following improvements on the Property: Replacement/update of two elevators and their related systems.

USE COVENANT

The Owner agrees that Improvements shall be used in accordance with their planned use (i.e., improvements to an affordable multi-family residential development for seniors with incomes at or below 80% AMI) (collectively, the "CDBG Use") for the duration of the term of this Covenant. Owner agrees to maintain the CDBG Use in accordance with all applicable CDBG program requirements for the term of this Covenant. The Grant Award is conditioned upon the Owner maintaining the CDBG Use for a period not less than ten (10) years.

Owner hereby warrants, represents, and agrees that it shall not interfere with, terminate, or otherwise discontinue the CDBG Use during the term of this Covenant. If Owner terminates or otherwise suspends the CDBG Use during the first five (5) years of the term of this Covenant, the Owner agrees it shall be

immediately obligated to refund to City all of the Grant Award funds, unless the City and the Owner otherwise agree in writing. If Owner terminates or otherwise suspends the CDBG Use between the fifth (5th) and the tenth (10th) years of the Term, Owner agrees it shall be immediately obligated to refund to CITY a pro-rated portion of the Grant Award funds unless the City and the Owner otherwise agree in writing.

2. TERM

This Covenant shall expire on the Affordability Restriction Agreement end date of the Grant Award. Until the 10th anniversary of the end date of the Grant Award, the Covenant shall be for the benefit of City and the U.S. Department of Housing and Urban Development (“HUD”). After that time, or such later time that HUD’s five (5) year requirements have been met, the Covenant shall be for the benefit of City for an additional five (5) years.

3. MAINTENANCE COVENANT

The Owner shall maintain the Improvements and the portion of the Property where they are located consistent with CDBG rules, The Owner shall not make or allow any changes thereto that would prevent the use of Improvements for the activities described in Section 2. On an annual basis, the Owner shall submit to the City a certificate of self-insurance or other proof of adequate property insurance

4. RUNS WITH THE LAND

The Owner hereby declares its understanding and intent that:

- (i) The covenants and restrictions contained herein shall be construed as covenants running with the land pursuant to California Civil Code section 1468 and not as conditions which might result in forfeiture of title by Owner; and,
- (ii) The burden of the covenants and restrictions set forth in this Covenant touch and concern the interest in the Property in that the Owner’s legal interest in the Property; and,
- (iii) The benefit of the covenants and restrictions set forth in this Covenant touch and concern the Property by enhancing and increasing the

enjoyment and use of the Property by low and moderate-income residents of the community, the intended beneficiaries of such covenants and restrictions.

All covenants and restrictions contained herein without regard to technical classification or designation shall be binding upon the Owner and its successors in interest for the benefit of the city, and such covenants and restrictions shall run in favor of such the City for the entire period during which such covenants and restrictions shall be in force and effect, without regard to whether the City is an owner of any land or interest therein to which such covenant and restrictions relate.

5. NON-DISCRIMINATION

The Grant Award 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 the Grant Award, the Owner shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination upon the basis of race, color, religion, sex, sexual orientation, actual or perceived gender identity, or national origin, in the sale, lease or rental, or in tire 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.

6. REMEDIES

In the event of any breach of any of the covenants or restrictions set forth herein (a "'Default-'), the City shall have the right to exercise all the rights and remedies, and to maintain any action at law or suits in equity or other real property proceeding. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of the City to enforce the provisions hereof in the future for any continuing or new breach or violation of any of the covenants or restrictions contained in this Covenant, All rights and remedies, including without limitation, any action to obtain repayment of the Grant Award, of any party legally entitled to enforce this Covenant, shall be cumulative and the exercise of any such right or remedy shall not impair or prejudice and shall not be a waiver of the right to exercise any other such rights and remedies.

7. NOTICES

Any notice or submittal required or permitted to be given to the City under this Covenant shall be in writing and personally served or sent by U.S. Mail, postage prepaid, addressed as follows:

To City: City of Santa Clara
 c/o Housing and Community Services
 1500 Warburton Avenue
 Santa Clara, CA 95050

8. RECITALS AND EXHIBITS

Attachment A: For Exhibit H – Affordability Restriction Agreement

The above recitals and the attached exhibits are hereby incorporated and made a part of this Covenant.

Attachment A
(For Exhibit H-Affordability Restriction Agreement)

Property Legal Description

All that certain real property situated in the City of Santa Clara, County of Santa Clara, State of California, described as follows.

The parcel has one building with 10 stories over 17,410 square feet.

Property address: 890 Main Street, Santa Clara, CA 95050.

Zoning: CT

Lot size: 22,762 sq. ft.

Acres: 0.52

Census Tract / Block: 5056.00/ 1

Map Reference: 54-B6

APN: 269-28-061

IN WITNESS WHERE OF, the Organization has executed this Covenant as of the date below

OWNER/ORGANIZATION:

**SANTA CLARA METHODIST RETIREMENT
FOUNDATION, INC.**

a California non-profit corporation

By: Priscilla J. Haynes
Title: Executive Officer
Address: 890 Main Street
Santa Clara. CA 95050

Date: _____

**CONTRIBUTION AGREEMENT
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
SANTA CLARA METHODIST RETIREMENT FOUNDATION, INC.**

**EXHIBIT I
PROMISSORY NOTE
SECURED BY DEED OF TRUST**

Liberty Tower Elevator Replacement

\$750,000

Santa Clara, California

_____, **2023**

FOR VALUE RECEIVED, the undersigned, SANTA CLARA METHODIST RETIREMENT FOUNDATION INC., a California nonprofit corporation (“Owner”) promises to pay to the CITY OF SANTA CLARA, a Chartered California Municipal Corporation, (the “City”) at 1500 Warburton Avenue, Santa Clara, CA 95050, or such other place as the City may from time to time designate in writing, the principal sum of **SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000)**.

This Note, along with the agreement by and between the City of Santa Clara and SANTA CLARA METHODIST RETIREMENT FOUNDATION, INC., to carry out **Liberty Tower Elevator Replacement** for the **2023-24** program year, as may be amended from time to time, (the “Grant Agreement”), is secured by a deed of trust with assignment of rents of even date herewith to be recorded in the Official Records of the City of Santa Clara (“Deed of Trust”) which encumbers the Property (APN 269-28-061) located at 890 Main Street, in the City of Santa Clara, as more particularly described in Exhibit A to the Deed of Trust

In addition to this Note, the terms and conditions of the indebtedness evidenced by this Note are set forth in the Deed of Trust, and the Grant Agreement (collectively the “Grant Documents”). Except where expressly stated otherwise, if there is any conflict between this Note, on the one hand, and the Grant Documents, on the other, this Note shall control.

1. **Interest.** The principal sum of this Note shall not accrue interest.
2. **Payment.** The entire unpaid balance of principal and interest shall be due and payable in the event of a default under the Loan Documents occurring by the Tenth Anniversary of the recordation of the Deed of Trust, or as extended by an amendment to the Agreement. If such a default has not occurred by this date, the Loan shall convert to a grant,

the Owner shall be entitled to request a reconveyance of the Deed of Trust and cancellation of this Note. After the reconveyance of the Deed of Trust, the Owner shall have no further obligation under the Grant Documents.

BORROWER HEREBY ACKNOWLEDGES AND UNDERSTANDS THAT THE ENTIRE PRINCIPAL SUM OF THE PROMISSORY NOTE MAY BE UNPAID AND DUE AND PAYABLE ON THE MATURITY DATE.

3. Acceleration of Obligation

3.1 All unpaid principal, plus any applicable fees or charges due under this Note, or the Grant Documents, shall, at the option of the City, be immediately due and payable, time being of the essence, if during the term of this Note there occurs any of the following:

- (a) by Borrower of any covenant or provision required to be performed by Borrower under the terms of this Note, or the Loan Documents, or the occurrence of any event of default under any of such documents; or
- (b) The voluntary or involuntary (including by operation of law), sale, transfer, lease, pledge, encumbrance, creation of a security interest in, or otherwise hypothecation or alienation of *all* or any part of the security secured by the Deed of Trust ("Security"), without City's prior written consent, except as allowed in the Deed of Trust. The consent by the City to any sale, transfer, lease, pledge, encumbrance, creation of a security interest in, or other hypothecation of: the Security shall not be deemed to constitute a novation or a consent to any further sale, transfer, lease, pledge encumbrance, creation of a security interest in or other hypothecation of, the Security without notice to and consent by the City. The City may, at its option, declare the indebtedness secured hereby immediately due and payable without notice to the Owner or any other person or entity (except as provided herein), upon all such sale, transfer, lease, pledge, encumbrance, creation of a security interest in, or other hypothecation or alienation in violation hereof. Without the written consent of the City, no sale, transfer, lease, pledge encumbrance, creation of security interest in, or other hypothecation of, the Security shall relieve or release the Owner from primary liability under the Deed of Trust or this Note, as the case may be. As used in this Section 4.1(b) the term "transfer" includes, without limitation, the following transactions:

- (i) Any total or partial sale, assignment or conveyance, or creation of any trust or power, or any transfer in any other mode or form with respect to the Security or any paid thereof or any interest therein, or any contract or agreement to do the same; and,
 - (ii) The cumulative transfer of more than ten percent (10%) of the capital stock, partnership profit and loss interest, or other form of interest in Owner; and,
 - (iii) any merger, consolidation, sale or lease of all or substantially all of the assets of the Owner.
 - (c) Owner defaults under any of the other deeds of trust that encumber the Property.
- 3.2 From and after the time at which City has the right to accelerate the repayment of this Note pursuant to Section 3.1 above, the entire principal sum of this Note shall automatically bear a maximum interest rate permitted by Section I (2) of Article XV of the California Constitution ("Default Rate").
- 3.3 Borrower shall have the right but not the obligation to prepay, without penalty, at any time all or any portion of the outstanding principal balance of this Note.
- 3.4 Notwithstanding any agreements between Borrower and City, in no event shall the total liability for payments in the nature of interest, additional interest and other charges exceed the applicable limits imposed by the usury laws of the State of California. Any such payments that are determined to exceed applicable usury rates, shall be deemed a payment of principal.
- 4. **Waiver by Owner.** Owner, any endorser of this Note, and all others who may become liable for all or any part of the obligations evidenced by this Note hereby severally waive demand, presentment for payment, demand and protest, notice of protest, demand and dishonor and non-payment and consent to any number of renewals or extensions of time hereof. Any such renewals or extensions may be made without notice to any of said parties and without affecting their liability. The pleading of any statute of limitations as a defense to any demand against the Owner is expressly waived by Owner.
- 5. **Other Encumbrances.**
 - 5.1 Subject to the terms of the Deed of Trust which, in this case, shall control over the Note, Borrower shall not further encumber, mortgage, or subject the Property or any interest therein to a Deed of Trust without

the prior written consent of the City.

- 5.2 Except for the existing Deed of Trust recorded against the Property, unless the City shall expressly agree otherwise in writing, all mortgage and Deed of Trust documents affecting the Property shall provide that in the event of any default or breach by the Borrower under any mortgage or Financing Statement other than the Deed of Trust entitling any party thereunder to accelerate the indebtedness secured thereby and foreclose upon the Property or any interest therein, the City may, at its option, (a) cure the default prior to the completion of any foreclosure and reinstate the mortgage Deed of Trust, or (b) pay the total unpaid indebtedness secured by such mortgage or Deed of Trust, in which event such mortgage or Deed of Trust shall be released. Amounts expended by the City under this paragraph shall be reimbursed by Borrower upon demand of the City therefor, and, in the event, shall bear interest at the maximum rate permitted by Section 1(2) of Article XV of the California Constitution from the date advanced by the City until paid in full. All such amounts (including such interest) shall be added to the principal of this Note. The approval by Borrower of any mortgage or Deed of Trust documents, and the placing of a security interest therefor on the Property or any portion thereof, not containing the provisions required by this Paragraph 5 shall constitute a default under this Note.
6. **Joint and Several.** The undersigned, if more than one, shall be jointly and severally liable hereunder.
7. **Purpose of Agreement.** It is the intent of the parties that the relationship evidenced by this Note shall be deemed to be one of debtor/creditor, and not of partnership or joint venture.
8. **Waiver by City.** Any failure of the City or other holder to exercise any rights hereunder shall not constitute a waiver of the rights to the later exercise thereof.
9. **Amendment.** This Note may not be changed, amended or modified orally.
10. **Governing Law.** This Note shall be governed by and construed in accordance with the laws of the State of California.
11. **Binding on Successors.** The terms of this Note shall apply to, inure to the benefit of, and bind all parties hereto, their heirs, legatees, devisees, administrators, executors, personal representatives, successors, and assigns. Whenever used, the words "Owner", "Grantee", "Organization" and "Trustor" shall be deemed to include the respective heirs, legatees, devisees, administrators, executors, personal representatives, successors and assigns of Maker and Holder.

12. **No Individual Liability.** Notwithstanding any provisions of this Note or the Grant Documents to the contrary, no director, officer, employee, shareholder, or other individual associated with the Owner shall have any personal liability under this Note or the Grant Documents, it being the intention of the parties that such liability is imposed solely on the corporate entity which comprises the Owner.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the Organization has executed this Covenant as of the date of this agreement.

OWNER/ORGANIZATION:

**SANTA CLARA METHODIST RETIREMENT
FOUNDATION, INC.,**

a California non-profit corporation

By: Priscilla J. Haynes
Title: Executive Officer
Address: 890 Main Street
Santa Clara. CA 95050

Date: _____

**CONTRIBUTION AGREEMENT
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
SANTA CLARA METHODIST RETIREMENT FOUNDATION, INC.**

EXHIBIT J

DEED OF TRUST

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO
Name: City Clerk's Office
Street Address: 1500 Warburton Avenue
City & State: Santa Clara, California
Zip Code: 95050

Order No.: _____

Parcel No.: _____

REC	
RMF	
MICRO	
RTCF	
LIEN	
SMPF	
PCOR	

SPACE ABOVE THIS LINE FOR RECORDER'S USE

TO BE RECORDED WITHOUT FEE FOR GOVERNMENT CODE SELECTIONS 6103 AND 27383

DEED OF TRUST WITH ASSIGNMENT OF RENTS

(This Deed of Trust contains an acceleration clause)

This DEED OF TRUST made this ____ day of _____, 2023 between **SANTA CLARA METHODIST RETIREMENT FOUNDATION, INC.**, a California nonprofit corporation, herein called Trustor, whose address is 890 Main Street, Santa Clara, CA 95050, the City of Santa Clara, herein called Trustee, and the CITY OF SANTA CLARA, herein called Beneficiary.

Witnessed: That Trustor irrevocably grants, transfer and assigns to Trustee in Trust, with Power of Sale, that Property located at **890 Main Street, Santa Clara, CA 95050** in the City of Santa Clara, County of Santa Clara, California, more particularly described as in **EXHIBIT A** Legal Description, attached hereto and incorporated herein.

If the Trustor shall sell, convey or alienate said property, or any part thereof, or any interest therein, or shall be divested of his title or any interest therein in any manner or way, whether voluntarily or involuntarily, without the written consent of the beneficiary being first had and obtained, beneficiary shall have the right, at its option, to declare any indebtedness or obligations secured hereby, irrespective of the maturity date specified in any note evidencing the same, immediately due and payable.

TOGETHER WITH the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits.

For the Purpose of Securing (1) payment of the sum of **(\$750,000.00)** according to the terms of a promissory note or notes of even date herewith made by Trustor, payable to order of Beneficiary, and extensions or renewals thereof; (2) the performance of each agreement of Trustor incorporated by reference or contained herein or reciting it is so secured; (3) Payment

of additional sums and interest thereon which may hereafter be loaned to Trustor, or his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

To protect the security of this Deed of Trust, and with respect to the property above described, Trustor expressly makes each and all of the agreements, and adopts and agrees to perform and be bound by each and all of the terms and provisions set forth in subdivision A of that certain Fictitious Deed of Trust recorded in the book and page of Official Records in the office of the county recorder of the county where said property is located, noted below opposite the name of such county, namely:

COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE
Alameda	1288	556	Kings	858	713	Placer	1028	379	Sierra	38	187
Alpine	3	130-31	Lake	437	110	Plumas	166	1307	Siskiyou	506	762
Amador	133	438	Lassen	192	367	Riverside	3788	347	Solano	1287	621
Butte	1330	513	Los Angeles	T-3878	874	Sacramento	71-10-26	615	Sonoma	2067	427
Calaveras	185	338	Madera	911	136	San Benito	300	405	Stanislaus	1970	56
Colusa	323	391	Marin	1849	122	San Bernardino	6213	768	Sutter	655	585
Contra Costa	4684	1	Mariposa	90	453	San Francisco	A-804	596	Tehama	457	183
Del Norte	101	549	Mendocino	667	99	San Juaquin	2855	283	Trinity	108	595
El Dorado	704	635	Merced	1660	753	San Luis Obispo	1311	137	Tulare	2530	108
Fresno	5052	623	Modoc	191	93	San Mateo	4788	175	Tuolumne	177	160
Glenn	469	76	Mono	69	302	Santa Barbara	2065	881	Ventura	2607	237
Humboldt	801	83	Monterey	357	239	Santa Clara	6626	664	Yolo	769	16
Imperial	1189	701	Napa	704	742	Santa Cruz	1638	607	Yuba	398	693
Inyo	165	672	Nevada	363	94	Shasta	800	633			
Kern	3756	690	Orange	7182	18	San Diego SERIES 5 Book 1964, Page 149774					

Said agreements, terms and provisions contained in said subdivision A and B, (identical in all counties are printed on the reverse side hereof) are by the within reference thereto, incorporated herein and made a part of this Deed of Trust for all purposes as fully as if set forth at length herein, and Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge therefore does not exceed the maximum allowed by laws.

The foregoing assignment of rents is absolute unless initiated here, in which case, the assignment serves as additional security.

BY SIGNING BELOW, Trustor accepts and agrees to the terms and covenants contained in this Security Instrument (including those provisions of the Fictitious Deed of Trust that are incorporated by reference) and in the Rider executed by Trustor and attached hereto as **EXHIBIT B** and incorporated hereby.

The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be mailed to him at this address hereinbefore set forth.

[SIGNATURE(S) TO FOLLOW]

IN WITNESS WHEREOF, the Organization has executed this Covenant as of the date of this agreement.

OWNER/ORGANIZATION:

**SANTA CLARA METHODIST RETIREMENT
FOUNDATION, INC.,**
a California non-profit corporation

By: Priscilla J. Haynes
Title: Executive Officer
Address: 890 Main Street
Santa Clara. CA 95050

Date: _____

The following is a copy of provisions (1) to (14) inclusive, of the fictitious Deed of Trust, recorded in each county in California, as stated in the foregoing Deed of Trust and incorporated by reference in said Deed of Trust as being a part thereof as if set forth at length therein.

A. To Protect the Security of This Deed of Trust, Trustor Agrees:

- (1) To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefore; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumeration herein not excluding the general.
- (2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or Beneficiary may apply other insurance policy upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.
- (3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.
- (4) To pay: at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges, and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.
- (5) Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any in cumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto;

and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

B. It is mutually agreed:

- (1) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.
- (2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not, waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.
- (3) That at any time or from time to time, without liability therefore and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.
- (4) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Owner in such reconveyance may be described as "the person or persons legally entitled thereto." Five years after issuance of such lull reconveyance, Trustee may destroy said note and this Deed (unless directed in such request to retain them).
- (5) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection

of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

- (6) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration or default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation or said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

- (7) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

- (8) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, or the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.
- (9) That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.
- (10) Subordination: Notwithstanding any provision herein, the City agrees the Deed of Trust may be subordinated to the lien of a loan secured by a deed of trust securing financing for the seismic retrofit upgrades to the Property.

DO NOT RECORD

REQUEST FOR FULL RECONVEYANCE TO TRUSTEE:

The undersigned is the legal owner and holder of the note or notes, and of all other indebtedness secured by the foregoing Deed of Trust. Said note or notes, together with all other indebtedness secured by said Deed of Trust, have been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to your underline terms of said deed of Trust, to cancel said note or notes above mentioned and all other evidences of indebtedness secured by said Deed of Trust delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you under the same.

Dated _____

Please mail Deed of Trust,
Note and Reconveyance to: **SANTA CLARA METHODIST RETIREMENT
FOUNDATION, INC.,
890 Main Street, SANTA CLARA, CA 95050**

Do not lose or destroy this Deed of Trust OR THE NOTE, which it secures. Both must be delivered to the Trustee

**EXHIBIT A
(For Deed of Trust)**

Property Legal Description

All that certain real property situated in the City of Santa Clara, County of Santa Clara, State of California, described as follows.

The parcel has one building with 10 stories over 17,410 square feet.

Property address: 890 Main Street, Santa Clara, CA 95050.

Zoning: CT

Lot size: 22,762 sq. ft.

Acres: 0.52

Census Tract / Block: 5056.00/ 1

Map Reference: 54-B6

APN: 269-28-061

EXHIBIT B

RIDER TO DEED OF TRUST AND ASSIGNMENT OF RENTS

THIS RIDER TO DEED OF TRUST AND ASSIGNMENT OF RENTS is made this _____ day of _____, 2023, and is incorporated into and shall be deemed to amend and supplement the Deed of Trust and Assignment of Rents (“Deed of Trust”) covering real property and any improvements thereon located 890 Main Street, Santa Clara, California 95050, and further described in the property description set forth in the Deed of Trust, (“Property”), of the same date given by the undersigned, SANTA CLARA METHODIST RETIREMENT FOUNDATION, INC., a California Nonprofit Corporation (“Trustor”) to secure Trustor’s promissory note to the City of Santa Clara, a municipal corporation (“City”) in the amount of **SEVEN HUNDRED FIFTY THOUSAND DOLLARS AND NO/100 (\$750,000.00)** dated of even date herewith (the “Note”).

In addition to the covenants and agreements made in the Deed of Trust, City and Trustor further covenant and agree as follows:

1. This Rider and the Deed of Trust are made in connection with a certain Grant Agreement by and between the City of Santa Clara and **SANTA CLARA METHODIST RETIREMENT FOUNDATION, INC.**, for the 2023-24 programs, as may be amended from time to time (“Grant Agreement”).

The Grant Agreement provides that Trustor is the recipient of certain Community Development Block Grant (“CDBG”) funds designated for rehabilitating Trustor’s building located at **890 Main Street** in Santa Clara, California (the “Facility”).

2. All sums secured by the Deed of Trust shall, at the option of City, become immediately due and payable upon:
 - (a) The sale or transfer by Trustor of the Facility or Property, without the prior written consent of City, prior to time periods specified in the Note and Grant Agreement; or,
 - (b) A use by Trustor of the Property or the Facility, prior to the expiration of time periods specified in the Note and Grant Agreement and the reconveyance of the Deed of Trust, which violates the terms of the Grant Agreement including the Affordability Restriction Agreement attached thereto, or which is not an

- “eligible activity” under Title 1 of the Housing and Community Development Act of 1974, Public Law 93-383, as amended and regulations issued pursuant thereto by the United States Department of Housing and Urban Development;
or,
- (c) An uncured default under the terms of the Deed of Trust, if City exercises this option. City shall give Trustor notice of acceleration. The notice shall provide a period of not less than sixty (60) days from the date the notice is mailed, within which Trustor must pay all sums secured by the Deed of Trust, If Trustor fails to pay these sums prior to the expiration of this sixty (60) day period, such failure shall constitute an uncured default and City may invoke any remedies permitted by the Deed of Trust without further notice or demand on Trustor.
3. The sums secured by the Deed of Trust shall be considered paid in full if the contingencies set forth in the Note and Grant Agreement have not occurred within the time periods set forth in the Grant Agreement. When said contingencies in the Note and the Grant Agreement do not occur within the time periods specified in the Grant Agreement, the Promissory Note shall have no further force or effect and shall be deemed null and void at the end of the latter of the time periods specified in the Grant Agreement, and City shall instruct the Trustee of the Deed of Trust to execute a full reconveyance, without warranty, of the Property described in the Deed of Trust.
4. Trustor hereby agrees to indemnify, hold harmless and defend with counsel of City’s choice, City, its agents, successors, and assigns for any and all expenses, costs, or liabilities directly or indirectly caused by displacement of and relocation of tenants located at the Facility.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

By signing below, Trustor accepts and agrees to the terms and provisions contained in this Rider.

IN WITNESS WHEREOF, the Organization has executed this Covenant as of the date of this agreement.

OWNER/ORGANIZATION:

**SANTA CLARA METHODIST RETIREMENT
FOUNDATION, INC.,**

a California non-profit corporation

By: Priscilla J. Haynes
Title: Executive Officer
Address: 890 Main Street
Santa Clara. CA 95050

Date: _____