



City of San Leandro

Meeting Date: September 3, 2019

Staff Report

File Number: 19-376

Agenda Section: ACTION ITEMS

Agenda Number: 10.A.

TO: City Council

FROM: Jeff Kay
City Manager

BY: Tom Liao
Community Development Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: Staff Report for a City of San Leandro City Council Resolution to Approve Two Loans totaling \$600,000 (\$300,000 in federal Community Development Block Grant Program Funds and \$300,000 in City General Funds) to assist the San Leandro Boys and Girls Club with the Rehabilitation of Buildings and Improvements on Property Owned by the City at 401 Marina Boulevard

SUMMARY AND RECOMMENDATIONS

The San Leandro Boys and Girls Club (B & G Club) is undergoing a major capital improvement project at its facility located at 401 Marina Boulevard. The building was constructed in 1966 on land that is owned by the City. The building is in need of renovations and modernization, especially since it is a highly utilized community facility for San Leandro families and children. The B & G Club formally submitted a capital improvement funding application for \$600,000 to the City in Spring 2019. At a public hearing on May 6, 2019, the FY 2019-2020 Annual Action Plan (AAP) for the U.S. Department of Housing and Urban Development (HUD) was adopted by the City Council. In this plan, City Council approved the allocation of \$300,000 in available CDBG funds for the rehabilitation of the B & G Club building. In addition to the \$300,000 in CDBG funds, staff also recommends that the City Council approve \$300,000 of General Funds for a total of \$600,000.

BACKGROUND AND ANALYSIS

Since the 1970s, the B & G Club has been an important community service provider and facility for San Leandro children. B & G Club has also in that time partnered with the City of San Leandro to operate and maintain the pool facility at the B & G Club's building at 401 Marina Boulevard. The B & G Club provides an aquatics program at the site that is available to City residents. The B & G Club serves approximately 900 low-income youth ages 6-14 years of age each year.

City funding will be used to renovate and modernize the building's locker rooms and showers, meeting spaces, and infrastructure upgrades. The \$600,000 from the City represents one of

several funding sources for the B & G Club. The estimated total project cost for the renovations is currently estimated to be \$9.9 million. (The City is separately funding and directly managing the renovation of the pool itself.)

Staff proposes that the City Council provide the \$600,000 to the B & G Club as forgivable loans. The interest rate for each loan would be 3% and the loan term would be 10 years. As long as the B & G Club complies with all of the loans' requirements, one tenth (1/10) of each loan will be forgiven each year. After the 10 year period, each loan and any accrued interest will be completely forgiven. If B & G Club defaults or fails to cure after notice any breach of the loans' covenants or conditions, the City has available to it various remedies, including specific performance, and acceleration of the loan payments, amongst others.

Current Agency Policies

HUD Five Year Consolidated Plan for 2015-2020: This five year plan was adopted by Resolution No. 2015-080 on April 20, 2015. One of the priorities identified in this document for Community Development Block Grant (CDBG) expenditures is "Non-Housing Community Development Projects." HUD requests that cities identify specific action areas where CDBG funds can be spent. In "Actions Planned to Develop Institutional Structure" staff named capital improvement projects conducted by area non-profit organizations that provide social services to the City as a priority area that CDBG funds could support.

Previous Actions

The City Council initially allocated these funds as part of the Fiscal Year 2018-19 budget. Those funds will be carried over to FY 2019-20 upon adoption of the attached resolution.

HUD FY 2019-2020 Action Plan: On May 6, 2019, the City Council approved the FY 2019-2020 Action Plan, which contains the B & G Club Organization Capital Improvement Project described above.

Environmental Review

A National Environmental Protection Act (NEPA) review was conducted and found this project to be in compliance with those standards.

Legal Analysis

The City Attorney's Office has reviewed and approved the staff report and resolution. In close coordination with staff, the City Attorney's Office drafted the loan agreements, and promissory notes.

Fiscal Impacts

The City of San Leandro will commit \$600,000 to the B & G Club Organization Capital Improvement Project. This will be funded by the City's Community Development Block Grant

entitlement funds in the amount of \$300,000 (Account 165-43-214-5240) and \$300,000 from the General Fund unrestricted fund balance to account 010-41-003-5890.

ATTACHMENT

Attachment to the Staff Report

- None

Attachment to the Resolution

CDBG Loan Agreement Between the City of San Leandro and San Leandro Boys and Girls Club, Inc.

Capital Improvement Loan Agreement Between the City of San Leandro and San Leandro Boys and Girls Club, Inc.

PREPARED BY: Maryann Sargent, Senior Housing Specialist, Community Development Department



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Resolution - Council

File Number: 19-377

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TO: City Council

FROM: Jeff Kay
City Manager

BY: Tom Liao
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Finance Director

TITLE: RESOLUTION of the City of San Leandro City Council to Approve (1) a General Fund Loan of \$300,000; and (2) a Loan of \$300,000 from CDBG Funds to the San Leandro Boys And Girls Club, Inc., and to Authorize the City Manager to Execute the Loan Agreements

WHEREAS, the City of San Leandro owns the property located at 401 Marina Boulevard, San Leandro, California (the "Property"); and

WHEREAS, the San Leandro Boys And Girls Club, Inc. ("Boys and Girls Club") owns and operates a clubhouse, pool and aquatic center on the Property that serves the San Leandro community; and

WHEREAS, Boys and Girls Club desires to undertake certain capital improvements to renovate and repair the clubhouse, including modernizing locker rooms and meeting spaces, as well as other infrastructure upgrades on the Property, and seeks City's assistance to accomplish this goal; and

WHEREAS, the City receives funds from the United States Department of Housing and Urban Development under Title I of the Housing and Community Development Act of 1974, as amended ("CDBG"), and desires to provide CDBG funded loans to qualified local nonprofit organizations, like Boys and Girls Club, to assist such organizations with capital improvement projects, in conformance and accordance with CDBG and HUD laws and regulations; and

WHEREAS, the City Council has also determined that the improvements to be undertaken by Boys and Girls Club will serve a public benefit because the Property is a recreational facility used by the entire San Leandro Community; and

WHEREAS, the City Council desires to provide Boys and Girls Club with a forgivable loan from the General Fund of Three Hundred Thousand Dollars (\$300,000) (the "General Fund Loan") and a forgivable loan of CDBG funds of Three Hundred Thousand Dollars (\$300,000) (the "CDBG Loan"); and

WHEREAS, both the General Fund Loan and CDBG Loan will be for ten years at three percent (3%) interest, but will be forgiven at the end of the loan term if Boys and Girls Club is not in default of either Loans' covenants, conditions, and requirements; and

WHEREAS, because the City already owns the Property, neither the General Fund Loan nor CDBG Loan can or will be secured by a deed of trust.

NOW THEREFORE, the City Council of the City of San Leandro hereby RESOLVES that:

1. The above recitals are true, correct, and a part of this Resolution.
2. The General Fund Loan is approved and the City Manager is authorized to execute the General

Fund Loan Agreement, substantially in the form attached hereto as Exhibit A, as approved by the City Attorney.

3. The CDBG Loan is approved and the City Manager is authorized to execute the CDBG Loan Agreement, substantially in the form attached hereto as Exhibit B, as approved by the City Attorney.
4. The City Manager, or his designee, is authorized to appropriate \$300,000 from the General Fund unrestricted funds to account 010-41-003-5890, appropriate \$300,000 from CDBG fund account 165-43-214-5240, and to execute such other documents and to take such other actions necessary to carry out the intent of this Resolution.
5. This Resolution takes effect immediately upon its adoption.

CDBG LOAN AGREEMENT
BETWEEN THE CITY OF SAN LEANDRO AND
SAN LEANDRO BOYS AND GIRLS CLUB, INC

This CDBG Loan Agreement (this "Agreement") is entered into as of _____, 2019 ("Effective Date") by and between the City of San Leandro, a California charter city ("City"), and San Leandro Boys And Girls Club, Inc., a California nonprofit corporation ("Participant"). City and Participant are hereinafter collectively referred to as the "Parties."

RECITALS

A. The City receives funds from HUD under Title I of the Housing and Community Development Act of 1974, as amended ("CDBG"). The CDBG funds must be used by the City in accordance with 24 CFR 570 et seq. (the "CDBG Regulations").

B. Participant has a right granted by City to occupy and operate its programs and services upon that certain real property located at 401 Marina Boulevard, San Leandro, California, legally described in Exhibit A (the "Property").

C. Participant desires to perform capital improvements related to the Property, as described under the scope of work, attached hereto as Exhibit B and incorporated herein, including modernizing locker rooms and meeting spaces, as well as other infrastructure upgrades, and seeks City's assistance to accomplish this goal (the "Improvements").

D. City desires to provide CDBG loans to qualified local nonprofit organizations like Participant in order to assist such organizations with capital improvement projects.

E. City has determined that Participant is a qualified local nonprofit organization and is eligible to receive a loan of CDBG funds to construct the Improvements (the "CDBG Loan").

F. The City Council approved its FY2019-2020 U.S. Department of Housing and Urban Development Annual Action Plan, which included funding for the CDBG Loan, on May 6, 2019.

G. Concurrently herewith Borrower shall execute a promissory note (the "CDBG Note") in the amount of the CDBG Loan. This Agreement and the CDBG Note are collectively hereinafter referred to as the "Loan Documents."

H. The California Environmental Quality Act (Public Resources Code Sections 21000 et seq.) ("CEQA") imposes no conditions on the City's consideration and approval of this Agreement because the Improvements are exempt from CEQA requirements under the categorical exemption set forth in 14 California Code of Regulations Section 15303(b).

I. In accordance with the National Environmental Policy Act of 1969, as amended (42 USC 4321-4347) ("NEPA"), the City has completed and approved all applicable environmental review for the activities proposed to be undertaken under this Agreement.

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

ARTICLE I
LOAN TERMS; USE AND DISBURSEMENT OF PROCEEDS

1.1 LOAN. City agrees to loan to Participant, and Participant agrees to borrow from City a sum of up to Three Hundred Thousand Dollars (\$300,000.00) (the "CDBG Loan") upon the terms and conditions and for the purposes set forth in this Agreement for construction of Improvements approved by the City. The CDBG Loan is funded with the City's allocation of CDBG Funds. The CDBG Loan shall be evidenced by a CDBG Note, which shall be dated as of the Effective Date.

1.1.1. FEDERAL AWARD IDENTIFICATION. Federal award identification information regarding the funding provided to Participant by this Agreement, as required by 24 CFR 200.331, is included in Exhibit C, attached hereto and incorporated herein.

1.2 REPAYMENT; INTEREST RATE; FORGIVENESS.

1.2.1 LOAN TERM AND REPAYMENT. The Term of this Agreement shall be ten (10) years. Provided that Participant is not in default under the Loan Documents, the City shall forgive one tenth (1/10th) of the principal of the CDBG Loan, which is equal to Thirty Thousand Dollars (\$30,000.00), annually on the anniversary of the Effective Date. On the tenth (10th) anniversary of the Effective Date, provided that no default or breach by Participant has occurred pursuant to Article IV, the entire outstanding principal and interest accrued on the CDBG Loan shall be forgiven. If Participant sells or transfers the Property or changes the use of the Property without written approval from the City, the CDBG Loan shall become due and payable upon sale.

1.2.2 TIMELINE TO SPEND THE LOAN. Participant shall expend the entire CDBG Loan within twenty-four (24) months of the effective date of this Agreement.

1.2.3 INTEREST. Interest shall accrue on the principal balance of the CDBG Loan at a rate of three percent (3%) simple interest per annum.

1.3 PREPAYMENT. Participant may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under the CDBG Note. Any prepayment of principal must be accompanied by interest accrued but unpaid to the date of receipt of prepayment. Prepayments shall be applied first to any unpaid late charges and other costs and fees then due, then to accrued but unpaid interest and then to principal.

1.4 USE OF PROCEEDS. Participant shall use the proceeds of the CDBG Loan (the "CDBG Loan Proceeds") solely and exclusively to pay for the construction of the Improvements described in Exhibit B and in accordance with the budget and timeline specified in Exhibit B.

1.5 DISBURSEMENT OF PROCEEDS. Participant shall submit separate written requests for each disbursement of CDBG Loan funds with supporting evidence for all amounts requested (each a

"Requisition"). Participant shall submit each Requisition to the Community Development Director, or her/his designee, stating the requisition or invoice number (e.g., Invoice #1) and purpose and amount of the requested disbursement. Participant shall attach copies of any documents supporting the Requisition, including estimates, bids, receipts, invoices, contracts, payment schedules, or evidence of Participant's payment of preconstruction and rehabilitation expenses required to fund the Improvements. The supporting documents shall state the time period in which work was performed, and the expenses to be funded with the CDBG Loan Proceeds.

1.6 RESERVED.

1.7 CONDITIONS PRECEDENT TO DISBURSEMENT OF PROCEEDS. City's obligation to disburse the CDBG Loan Proceeds is conditioned upon the satisfaction of all of the following conditions:

(a) Participant's delivery to City of fully executed Loan Documents;

(b) Participant's delivery to City of evidence reasonably satisfactory to City that Participant obtained all necessary permits (including without limitation, building permits), licenses, and approvals required to undertake the Improvements, or that the receipt of such permits is subject only to such conditions as City shall reasonably approve;

(c) City shall have received and approved the final plans and specifications for the Improvements;

(d) City shall have received copies of labor and materials bonds and performance bonds for the construction of the Improvements in an amount equal to one hundred percent (100%) of the scheduled cost of the Improvements.

(e) Participant's delivery to the City of evidence of insurance coverage in accordance with the requirements set forth in this Agreement;

(f) Participant's delivery to City of such documentation as City shall reasonably require regarding Participant's organizational status and authority to execute and perform Participant's obligations under the Loan Documents;

(g) Participant's delivery to City of all of the following: (i) Improvements budget; (ii) construction contract; (iii) other assurance of completion reasonably acceptable to City; and (iv) copies of such other documents related to the development and financing of the Improvements as City may reasonably request; and

(h) No material adverse change as determined by City in its reasonable judgment shall have occurred in the condition of the Property or the Improvements or in the financial or other condition of Participant since the date of this Agreement.

1.8 NO OBLIGATION TO DISBURSE PROCEEDS UPON DEFAULT. Notwithstanding any other provision of this Agreement, the City shall have no obligation to disburse any portion of the CDBG Loan Proceeds if there is an occurrence of an Event of Default (defined below) under the Loan Documents.

ARTICLE II
CONSTRUCTION OF THE IMPROVEMENTS

2.1 CONSTRUCTION SCHEDULE. Participant shall adhere to the schedule attached hereto under the Scope of Work as Exhibit B. Participant must obtain written approval from the City for any changes to the construction schedule.

ARTICLE III
AFFIRMATIVE COVENANTS

3.1 USE OF FUNDS. Participant covenants that it shall use the CDBG Loan Proceeds solely for the purpose of financing the construction of the Improvements in accordance with Section 1.4.

3.2 COMPLIANCE WITH LAWS. Participant covenants to comply with all federal, state and local laws, regulations, ordinances and rules applicable to the Property and the Improvements, including without limitation, all applicable requirements of state and local building codes and regulations, and all applicable statutes and regulations relating to accessibility for the disabled.

3.3 INSURANCE. Participant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Participant, its agents, representatives, employees, contractors or subcontractors. Consistent with the following provisions, Participant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work. Participant shall maintain the insurance policies required by this section throughout the term of this Agreement. Participant shall not allow any contractor to commence work until Participant has obtained all insurance required herein for the contractor and provided evidence to the City that such insurance is in effect. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Participant shall maintain all required insurance listed herein for the duration of this Agreement.

- A. Workers' Compensation. Participant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Participant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$1,000,000 per accident. In the alternative, Participant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City. The insurer, if insurance is provided, or the Participant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.
- B. Commercial General and Automobile Liability Insurance.

- 1) General requirements. Participant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than \$2,000,000 per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.
- 2) Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition), Code 1 (any auto). No endorsement shall be attached limiting the coverage.
- 3) Additional requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:
 - a. The Insurance shall cover on an occurrence or an occurrence basis, and not on a claims-made basis.
 - b. City, its officers, officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Participant; or automobiles owned, leased, hired, or borrowed by the Participant.
 - c. For any claims related to this Agreement or the work hereunder, the Participant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be in excess of the Participant's insurance and shall not contribute with it.
 - d. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the City.

C. All Policies Requirements.

- 1) Acceptability of insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

- 2) Verification of coverage. Prior to commencing or authorizing the commencement of any work under this Agreement, Participant shall furnish City with complete copies of all policies delivered to Participant by the insurer, including complete copies of all endorsements attached to those policies. All copies of policies and endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Participant beginning work, it shall not waive the Participant's obligation to provide them.

- 3) Deductibles and Self-Insured Retentions. Participant shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees, and volunteers; or the Participant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

- 4) Wasting Policies. No policy required by this Section shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

- 5) Waiver of Subrogation. Participant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Participant agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the Participant, its employees, agents, and subcontractors.

D. Subcontractors. Participant shall include, or require its general or prime contractor to include, all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

The City Risk Manager may approve a variation in those insurance requirements upon a determination that the coverages, scope, limits and forms of such insurance are either not commercially available or that the City's interests are otherwise fully protected.

3.4 MAINTENANCE. Participant shall maintain the Improvements to the City's standards and repair Improvements at Participant's own expense for a period of not less than ten (10) years after completion thereof.

3.5 INDEMNIFICATION. Participant shall indemnify, defend (with counsel reasonably acceptable to City), and hold harmless the City and its respective elected and appointed officials, officers, agents, and employees (collectively the Indemnitees"), from and against, and shall pay on demand, any and all losses, liabilities, damages, costs, claims, demands, penalties, fines, orders, judgments, injunctive or other relief, expenses and charges (including attorneys' fees and expenses of attorneys) (collectively "Liabilities")

arising directly or indirectly in any manner in connection with or as a result of (a) any breach of Participant's covenants under the Loan Documents, (b) any failure of Participant's representations and warranties to be true and correct in all material respects when made, (c) injury or death to persons or damage to property or other loss occurring on the Property, whether caused by the negligence or any other act or omission of Participant or any other person or by negligent, faulty, inadequate or defective design, building, construction or maintenance or any other condition or otherwise, or (d) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee which relates to or arises out of the Property, the Improvements, the CDBG Loan, the Loan Documents, or any transaction contemplated thereby, or any failure of Participant to comply with all applicable state, federal and local laws and regulations, including without limitation, applicable provisions of the California Building Standards Code, the Prevailing Wage Laws, and the Americans with Disabilities Act in connection with the construction or operation of the Improvements, provided that no Indemnitee shall be entitled to indemnification under this Section for matters caused by such Indemnitee's gross negligence or willful misconduct. The obligations of Participant under this Section shall survive the expiration or termination of this Agreement and the making and repayment of the CDBG Loan.

3.6 OBLIGATION TO REFRAIN FROM DISCRIMINATION. Participant shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Participant covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or part thereof, nor shall Participant or any person claiming under or through Participant establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in, of, or for the Property or part thereof. Participant shall include such provision in all deeds, leases, contracts and other instruments executed by Participant, and shall enforce the same diligently and in good faith.

All deeds, leases or contracts made or entered into by Participant, its successors or assigns, as to any portion of the Property or the Improvements shall contain the following language:

(a) In Deeds, the following language shall appear:
"Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of a person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land."

(b) In Leases, the following language shall appear:

"The lessee herein covenants by and for the lessee and lessee's heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein leased."

(c) In Contracts

"There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to selection, location, number, use or occupancy of tenants, lessee, subtenants, sublessees or vendees of the land."

3.7 USE OF PROPERTY: Participant may not change the use or planned use of any such property (including the beneficiaries of such use) from that for which the Improvements were made unless the Participant provides the City with reasonable notice of, and opportunity to comment on, any proposed change.

3.8 TAXES AND OTHER LIABILITIES. Participant shall pay and discharge when due any and all indebtedness, obligations, assessments, taxes, including federal and state payroll and income taxes which are the obligations of Participant in relation to the Property or the Improvements except those that Participant may in good faith contest or as to which a bona fide dispute may arise, provided provision is made to the satisfaction of City for eventual payment thereof in the event that it is found that the same is an obligation of Participant.

3.9 HAZARDOUS MATERIALS.

3.9.1 Covenants. Participant shall not cause or permit any Hazardous Materials (as defined below) to be brought upon, kept, stored or used in, on, or about the Property by Participant, or the agents, employees, contractors or invitees of Participant except for materials commonly used in construction activities similar to those related to the Improvements, or in the operation and maintenance of the Property and the Improvements, in each case in compliance with all applicable laws, and shall not cause any release of Hazardous Materials into, onto, under or through the Property. If any Hazardous Material is discharged, released, dumped, or spilled in, on, under, or about the Property and results in any contamination of the Property or adjacent property, or otherwise results in the release or discharge of Hazardous Materials in, on, under or from the Property, Participant shall promptly take all actions at Participant's sole expense as are necessary to comply with all Environmental Laws (as defined below).

"Hazardous Materials" means any substance, material or waste which is or becomes regulated by any federal, state or local governmental authority, and includes without limitation (i) petroleum or oil or gas or any direct or indirect product or by-product thereof; (ii) asbestos and any material containing asbestos; (iii)

any substance, material or waste regulated by or listed (directly or by reference) as a "hazardous substance", "hazardous material", "hazardous waste", "toxic waste", "toxic pollutant", "toxic substance", "solid waste" or "pollutant or contaminant" in or pursuant to, or similarly identified as hazardous to human health or the environment in or pursuant to, the Toxic Substances Control Act [15 U.S.C. 2601, et seq.]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, et seq.], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, et seq.], the Resource Conservation and Recovery Act [42 U.S.C. 6901, et seq.], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, et seq.], the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, et seq.], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, et seq.], the California Hazardous Waste Act [California Health and Safety Code Section 25100, et seq.], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 25249.5, et seq.], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, et seq.], as they now exist or are hereafter amended, together with any regulations promulgated thereunder; (iv) any substance, material or waste which is defined as such or regulated by any "Superfund" or "Superlien" law, or any Environmental Law; or (v) any other substance, material, chemical, waste or pollutant identified as hazardous or toxic and regulated under any other federal, state or local environmental law, including without limitation, asbestos, polychlorinated biphenyls, petroleum, natural gas and synthetic fuel products and by-products.

"Environmental Law" means all federal, state or local statutes, ordinances, rules, regulations, orders, decrees, judgments or common law doctrines, and provisions and conditions of permits, licenses and other operating authorizations regulating, or relating to, or imposing liability or standards of conduct concerning (i) pollution or protection of the environment, including natural resources; (ii) exposure of persons, including employees and agents, to Hazardous Materials (as defined above) or other products, raw materials, chemicals or other substances; (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities; (iv) the manufacture, use or introduction into commerce of chemical substances, including without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal; or (v) the use, release or disposal of toxic or hazardous substances or Hazardous Materials or the remediation of air, surface waters, groundwaters or soil, as now or may at any later time be in effect, including but not limited to the Toxic Substances Control Act [15 U.S.C. 2601, et seq.]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, et seq.], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, et seq.], the Resource Conservation and Recovery Act [42 U.S.C. 6901, et seq.], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, et seq.], the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, et seq.], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, et seq.], the California Hazardous Waste Act [California Health and Safety Code Section 25100, et seq.], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 25249.5, et seq.], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, et seq.], as they now exist or are hereafter amended, together with any regulations promulgated thereunder.

3.10 PREVAILING WAGES. Participant shall pay and shall cause Participant's contractor and subcontractors to pay prevailing wages in the construction of the Improvements as those wages are determined pursuant to Labor Code Section 1720 et seq. and the regulations adopted pursuant thereto

("Prevailing Wage Laws") and shall comply or shall cause the contractor and subcontractors to comply with all other applicable provisions of the Prevailing Wage Laws. Participant shall maintain or shall cause the contractor and subcontractors to maintain such records as are necessary to determine if prevailing wages have been paid as required pursuant to the Prevailing Wage Laws during the construction of the Project. Participant shall cause the contractor to post at the Property the applicable prevailing rates of per diem wages. Participant shall indemnify, defend (with counsel approved by City) and hold the Indemnitees harmless from and against all Liabilities which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages (including without limitation, all claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code sections 1726 and 1781), the failure to comply with all applicable state and federal labor laws, regulations and standards in connection with the construction of the Project, including but not limited to the Prevailing Wage Laws, or any act or omission of Participant or Participant's contractors and subcontractors with respect to the payment or requirement of payment of prevailing wages, whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that City does not, and shall not, waive any rights against Participant which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or the deposit with City, of any of the insurance policies described in this Agreement. The provisions of this Section shall survive the expiration or termination of this Agreement and the making and repayment of the CDBG Loan.

ARTICLE IV NEGATIVE COVENANTS

Participant covenants and agrees that for the life of this Agreement, Participant will not, without prior written consent of the City:

4.1 USE OF FUNDS. Use any of the proceeds of the CDBG Loan except for the purpose(s) stated in Section 1.4 of this Agreement.

4.2 ENCUMBER THE PROPERTY. Create nor suffer to exist any mortgage, lien, charge, or encumbrance, including liens arising from judgments on the Property. This includes Workers' Compensation, unemployment, Internal Revenue Service, state, local, mechanic, and any other liens of any type; provided however, that Participant shall have thirty (30) days to discharge or provide adequate security for any involuntary lien upon the Property except that which may be in the ordinary course of business to obtain a line of credit or letters of credit.

4.3 MERGER, CONSOLIDATION, SALE OF ASSETS. Merge into or consolidate with any corporation or other entity, or acquire all or substantially all of the assets of any other corporation or entity; or sell, lease, assign, transfer or otherwise dispose of all or substantially all Participant's assets.

4.4 LOANS, ADVANCES, INVESTMENTS. Make any loan or advances to or investments in, any person or entity except those usually made in the ordinary course of business.

ARTICLE V DEFAULT AND REMEDIES

5.1 EVENTS OF DEFAULT. The occurrence of any one or more of the following events shall constitute an event of default hereunder ("Event of Default"):

(a) Participant removes the Improvements from the Property, or fails to maintain the Improvements and the Property according to the City's standards, or fails to promptly make repairs in violation of Section 3.4.

(b) Any representation or warranty contained in this Agreement or any certificate furnished in connection with the foregoing or in connection with any request for disbursement of CDBG Loan Proceeds proves to have been false or misleading in any respect when made.

(c) Participant defaults in the performance of any term, provision, covenant or agreement (other than an obligation enumerated in this Article V) contained in this Agreement or unless a shorter cure period for such default is specified herein, the default continues for ten (10) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default after the date upon which City shall have given written notice of the default to Participant (or such longer time as City may agree upon in writing), provided that in each case Participant commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith.

(d) Participant becomes insolvent or shall cease to pay its debts as they mature or voluntarily files a petition seeking reorganization of, or the appointment of a receiver, trustee, or liquidation for it or a substantial portion of its assets, or to effect a plan or other arrangement with creditors, or shall be adjudicated bankrupt, or shall make voluntary assignment for the benefit of creditors.

(e) An insolvency petition is filed against Participant under any bankruptcy, insolvency, or similar law or seeking the reorganization of or the appointment of a receiver, trustee, or liquidator for Recipient, or of a substantial part of the property of the Recipient's, or a writ or warrant of attachment or similar process shall be issued against a substantial part of the property of Recipient, and such petition shall not be dismissed, or such writ or warrant of attachment or similar process shall not be released or bonded, within sixty (60) days of filing of levy.

5.2 REMEDIES AND RIGHTS UPON DEFAULT. Upon the occurrence of an Event of Default, City shall have all remedies available to it under law or equity, including, but not limited to the following, and City may, at its election, without notice to or demand upon Participant, except for notices or demands required by law or expressly required pursuant to this Agreement, exercise one or more of the following remedies:

- a) Seek specific performance to enforce the terms of this Agreement;
- b) Accelerate and declare the balance of the CDBG Note and interest accrued thereon immediately due and payable;
- c) Pursue any and all other remedies available under any other Loan Document;
- d) Terminate Participant's right to use or occupy the Property. Participant understands that the Property is owned by the City, and expressly acknowledges and agrees that an Event of Default shall give the City the right to terminate Participant's right to use or occupy the

Property, notwithstanding Participant's rights under any other agreement regarding use of the Property.

- e) Pursue any and all other remedies available under law to enforce the terms of this Agreement and City's rights hereunder.

5.3 REMEDIES CUMULATIVE. Each of the remedies provided herein is cumulative and not exclusive of, and shall not prejudice any other remedy provided herein. The City may exercise from time to time any rights and remedies available to it under applicable law, in addition to, and not in lieu of, any rights and remedies expressly granted in this Agreement or in any other instrument or notice, demand or legal process of any kind.

ARTICLE VI FEDERAL REQUIREMENTS

6.1 GOVERNMENTAL REGULATIONS. To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Participant shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program. In particular, Participant agrees to comply with all applicable provisions of the Housing and Community Development Act of 1974 (Public Law 93-383) and regulations promulgated pursuant thereto. Participant also agrees to carry out activities in compliance with the requirements of Subpart K of 24 CFR 570.

6.2. RECORDS. Participant shall keep and maintain at the Project, or elsewhere with the City's written consent, full, complete and appropriate books, record and accounts relating to this Agreement and the construction of the Improvements, including all such books, records and accounts necessary or prudent to evidence and substantiate in full detail Participant's compliance with the terms and provisions of this Agreement. Books, records and accounts relating to Participant's compliance with the terms, provisions, covenants and conditions of this Agreement shall be kept and maintained in accordance with generally accepted accounting principles consistently applied, and shall be consistent with all requirements of this Agreement. All such books, records, and accounts shall be open to and available for inspection and copying by HUD, the City, its auditors or other authorized representatives at reasonable intervals during normal business hours. Copies of all tax returns and other reports that Participant may be required to furnish to any governmental agency shall at all reasonable times be open for inspection by the City at the place that the books, records and accounts of the Participant are kept. Participant shall preserve such records for a period of not less than five (5) years after the creation of such records in compliance with all HUD records and accounting requirements. If any litigation, claim, negotiation, audit exception, monitoring, inspection or other action relating to the use of the CDBG Loan is pending at the end of the record retention period stated herein, then Participant shall retain such records until such action and all related issues are resolved. Such records shall include all invoices, receipts, and other documents related to expenditures from the CDBG Loan funds. Records must be kept accurate and current and in such a form as to allow the City to comply with the recordkeeping requirements contained in 24 CFR 92.506.

6.3 AUDITS AND INSPECTIONS.

6.3.1 Participant shall at any time during normal business hours and as often as the City, HUD and the Comptroller General of the United States may deem necessary, make available to their

representatives for examination all of Participant's records with respect to all matters covered by this Agreement and shall permit such representatives to audit, examine and make excerpts or transcripts from such records, and to make audits of all documents and conditions relating to this Agreement. All costs are subject to the eligibility requirements of HUD.

6.3.2 Participant shall permit and facilitate observation and inspection of the work and records at Participant's principal office and job site by City, its employees and public authorities during reasonable business hours.

6.4. CONFLICT OF INTEREST.

6.4.1. Participant certifies that no member of, or delegate to the Congress of the United States shall be permitted to share, or take part in this Agreement or in any benefit arising therefrom. Participant shall comply with the conflict of interest provisions set forth in 24 CFR Section 570.611.

6.4.2. Participant certifies that no member, officer, or employee of the City of San Leandro, or its designees or agents, no member of the San Leandro City Council, and no other public official of the City of San Leandro who exercises any functions or responsibilities with respect to the Community Development Block Grant (CDBG) Program during its tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with this Agreement.

6.4.3. Participant hereby certifies that no member, officer, official or employee of the Participant who is in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.

6.4.4. Participant shall incorporate, or cause to be incorporated, in all subcontracts for work to be performed under this Agreement a provision prohibiting such interest pursuant to the purposes of this section.

6.5. POLITICAL ACTIVITY PROHIBITED. None of the funds, materials, property or services contributed by the City or Participant under this Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

6.6. LOBBYING. To the best of Participant's knowledge and belief:

6.5.1. No Federal-appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement;

6.5.2. 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, Participant will complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions; and

6.5.3. Participant will require that the language of paragraph (b) of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Participants shall certify and disclose accordingly;

6.7. RELIGIOUS ACTIVITY PROHIBITED. There shall be no religious worship, religious instruction, or proselytization as part of, or in connection with the performance of this Agreement. Participant shall comply with the provisions of 24 CFR 570.200 (j) (2).

6.8. EQUAL OPPORTUNITY.

6.8.1. EQUAL OPPORTUNITY. During the construction of the Improvements there shall be no discrimination on the basis of race, color, creed, religion, age, sex, sexual orientation, marital status, national origin, ancestry, or disability in the hiring, firing, promoting, or demoting of any person.

6.8.2 MINORITY AND WOMEN-OWNED CONTRACTORS. Participant will use its best efforts to afford minority-owned and women-owned business enterprises the maximum practicable opportunity to participate in the construction of the Project. Participant shall, at a minimum, notify applicable minority-owned and women-owned business firms located in Alameda County of bid opportunities for the construction of the Project. Documentation of such notifications shall be maintained by Participant and available to the City as requested.

6.9. DAVIS-BACON ACT AND LABOR STANDARDS. Participant agrees to comply with the applicable labor requirements set forth in 24 CFR Section 570.603, as such requires compliance with the prevailing wage requirements of the Davis-Bacon Act and implementing rules and regulations (40 USC 3141-3148); the Copeland "Anti-Kickback" Act (40 USC 276(c)) which requires that workers be paid at least once a week without any deductions or rebates except permissible deductions; the Contract Work Hours and Safety Standards Act – CWHSSA (40 USC 3701-3708) which requires that workers receive "overtime" compensation at a rate of 1-1/2 times their regular hourly wage after they have worked forty (40) hours in one (1) week; and Title 29, Code of Federal Regulations, Subtitle A, Parts 1, 3 and 5, which are the regulations and procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended.

6.10. USE OF DEBARRED, SUSPENDED OR INELIGIBLE CONTRACTORS.

Participant shall take provisions to ensure that contracts are not awarded to any contractor or subcontractor during any period of debarment, suspension, or ineligibility status under the provisions of 24 CFR Part 24.

6.11. SECTION 3. The parties to this Agreement acknowledge, consent and agree that:

6.11.1. The work to be performed under this contract is assisted by direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given to Section 3 residents and businesses. A Section 3 resident is defined as residents of public housing, or low-income residents whose income (or a family whose income, adjusted for family size) does not exceed 50% of the median income, or low-income residents whose income (or a family whose income, adjusted for family size) does not exceed 80% of the median income. A Section 3 business is one that is owned by Section 3 residents, or employs Section 3 residents in full-time positions, or subcontracts with businesses which provide economic opportunities to low-income persons.

6.11.2. The parties to this Agreement will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 C.F.R. 135, and all applicable rules and orders of the Department issued thereunder. The parties to this Agreement certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

6.11.3. Participant will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of the commitments under the Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

6.11.4. Participant will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 C.F.R. 135. Participant will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 C.F.R. 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

6.12. ENVIRONMENTAL CONDITIONS AND HISTORICAL PRESERVATION

6.12.1. Air and Water

Participant agrees to comply with the following regulations insofar as they apply to the performance of this contract:

- i. Clean Air Act, 42 U.S.C., 1857, et seq.
- ii. Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq. as amended; Section 1318 relating to inspection, monitoring, entry, reports, and

information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.

- iii. Environmental Protection Agency (EPA) regulations pursuant to 40 C.F.R., Part 50, as amended.
- iv. National Environmental Policy Act of 1969.
- v. HUD Environmental Review Procedures (24 CFR, Part 58).
- vi. California Environmental Quality Act.

6.12.2. Flood Disaster Protection

Participant agrees to comply with the requirements of the Flood Disaster Protection Act of 1973 (P.L. 2234) in regard to the sale, lease, or other transfer of land acquired, cleared or improved under the terms of this agreement, as it may apply to the provisions of this agreement.

6.12.3. Historic Preservation

If applicable, Participant agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR, Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic properties.

In general and if applicable, the City or Participant shall obtain concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of properties that are fifty years old or older or that are included on a Federal, State, or local historic property list.

6.12.4. Reserved.

6.13. Reserved.

6.14. PROGRAM ACCESSIBILITY

To the extent applicable, Participant shall construct the Improvements in compliance with all applicable federal and state disabled persons accessibility requirements including but not limited to the Federal Fair Housing Act; Section 504 of the Rehabilitation Act of 1973 ("Section 504"); Title II and/or Title III of the Americans with Disabilities Act; and Title 24 of the California Code of Regulations (collectively, the "Accessibility Requirements"). In compliance with Section 504 Participant shall provide the City with a certification from the Improvements architect that to the best of the architect's knowledge, the Improvements comply with all federal and state accessibility requirements applicable to the Improvements. Participant shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Participant, its architect, contractor and

subcontractors) to construct the Improvements in accordance with the Accessibility Requirements. The requirements in this Subsection survive repayment of the CDBG Loan.

6.15 FINANCIAL MANAGEMENT AND RECORDING SYSTEM. Since Participant is a non-profit organization and not a government agency, the Participant shall comply with OMB Circular A-122, "Cost Principles for Non-Profit Organizations" or OMB Circular A-21, "Cost Principles for Educational Institutions," as applicable, and OMB Circular A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations," as specified at 24 CFR 570.502(b). All Contractors shall comply with the applicable provisions under OMB Circular A-133, "Audits of States, Local Governments, and Non-profit Organizations."

If indirect costs are charged the Participant will develop an indirect cost allocation plan for determining the appropriate Participant's share of administrative costs and shall submit such plan to the City for approval.

6.16 PROGRAM INCOME. In the event that the Participant earns any program income, it shall comply with the requirements set forth in 24 CFR Part 570.504, Subpart J.

6.17 REVERSION OF ASSETS. Upon expiration of this Agreement, Participant shall transfer to CITY any unused CDBG funds on hand and any accounts receivable attributable to the use of CDBG Funds in accordance with 24 CFR § 570.503(b)(7).

6.18 OFFICE OF MANAGEMENT AND BUDGET STANDARDS. The Participant shall procure all materials, property, or services in accordance with the requirements of 24 CFR 84.40-48.

ARTICLE VII MISCELLANEOUS

7.1 NOTICES. All notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Party in accordance with this Section. All such notices sent by personal delivery shall be deemed delivered upon receipt and all notices sent first class, postage prepaid, return receipt requested shall be deemed delivered five (5) business days after deposit in the United States mail.

City: City of San Leandro
835 E. 14th Street
San Leandro, CA 94577
Attn: Community Development Director

Participant: San Leandro Boys And Girls Club, Inc.
401 Marina Blvd.
San Leandro, CA 94577
Attn: Executive Director

7.2 COUNTERPARTS. This Agreement may be executed in multiple counterparts each of which shall be an original and all of which taken together shall constitute one and the same instrument.

7.3 SEVERABILITY. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties are materially altered or abridged by such invalidation, voiding or unenforceability.

7.4 LEGAL ACTIONS; ATTORNEYS' FEES. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, the Party prevailing in any such action shall be entitled to recover against the other Party all reasonable attorneys' fees and costs incurred in such action.

7.5 CAPTIONS; INTERPRETATION. The captions of the Sections and Articles of this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party. Time is of the essence in the performance of this Agreement.

7.6 PARTIES NOT CO-VENTURERS. At all times during the term of this Agreement, Participant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Participant only insofar as the results of Participant's services rendered pursuant to this Agreement; however, City shall not have the right to control the means by which Participant accomplishes services rendered pursuant to this Agreement. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

7.7 GOVERNING LAW; VENUE. This Agreement shall in all respects be construed and enforced in accordance with laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement must be filed in Alameda County, State of California, or the Northern District of California.

7.8 WAIVER; MODIFICATION AND AMENDMENT. No failure or delay on the part of the City in exercising any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy hereunder. No modification or waiver of any provision of this Agreement, nor any consent to any departure by Participant therefrom, shall in any event be effective unless the same shall be in writing, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on the Participant in any case shall entitle the Participant to any other or further notice or demand in similar or other circumstances. No amendment to or modification of this Agreement shall be effective unless and until such amendment or modification is in writing, properly approved in accordance with applicable procedures, and executed by the Parties.

7.9 ASSIGNMENT PROHIBITED. Participant shall not assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

7.10 NO THIRD PARTY BENEFICIARIES. There shall be no third party beneficiaries to this Agreement.

7.11 ENTIRE AGREEMENT; EXHIBITS. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior or contemporaneous oral or written agreements and negotiations between the Parties with respect thereto. Exhibits A through G attached hereto are incorporated herein by reference as though fully set forth herein. Notwithstanding any other agreement the contrary, the Parties hereto acknowledge and agree that the City owns the underlying land, identified as the Property, and Participant owns and operates the Improvements that are upon the Property. The City may, upon a breach or default of this Agreement, terminate Participant's right to be upon the Property.

7.12 SURVIVAL. All representations made by Participant herein and the provisions of Section 3.5 hereof shall survive the expiration or earlier termination of this Agreement and the making of the CDBG Loan. The representations of Participant made herein have been or will be relied upon by the City, notwithstanding any investigation made by the City or on its behalf.

7.13 ACTION BY THE CITY. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, or consent by the City is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City Manager or by any person who shall have been designated by the City Manager, without further approval by the City Council. City shall use reasonable best efforts to respond to requests for any such approval, notice, direction, or consent in a timely manner.

7.14 NON-LIABILITY OF CITY OFFICIALS, EMPLOYEES AND AGENTS. No member, official, employee or agent of the City shall be personally liable to Participant or any successor in interest to any of the foregoing in the event of any default or breach by the City, or for any amount of money which may become due to Participant or Participant's successor in interest or for any obligation of City under this Agreement.

7.15 BINDING UPON SUCCESSORS. Participant hereby subjects its interest in the Property and the Improvements to the covenants and restrictions set forth in this Agreement.

IN WITNESS WHEREOF, the Parties have each caused this Agreement to be duly executed as of the date first written above.

CITY:

PARTICIPANT:

CITY OF SAN LEANDRO

San Leandro Boys And Girls Club, Inc.

By: _____
Jeff Kay, City Manager

By: _____
Executive Director

Date: _____

ATTEST:

Leticia I. Miguel, City Clerk

APPROVED AS TO FORM:

Richard D. Pio Roda, City Attorney

APPROVED AS TO BUDGET:

David Baum , Finance Director

Account Number:

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT B

SCOPE OF WORK, SCHEDULE & BUDGET

EXHIBIT C

FEDERAL AWARD IDENTIFICATION INFORMATION

- i) Participant's name:
- ii) Participant's DUNS:
- iii) Federal Award Identification Number (FAIN):
- iv) Federal Award Date:
- v) Subaward Period of Performance Start and End Date:
- vi) Amount of Federal Funds Obligated by this action by the CITY entity to the Participant:
- vii) Total Amount of Federal Funds Obligated to the Participant by the CITY including the current obligation:
- viii) Total Amount of the Federal Award committed to the Participant by the CITY:
- ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA):
- x) Name of Federal awarding agency:
- xi) Contact information for CITY official responsible for awarding funding:
- xii) CFDA Number and Name:
- xiii) Identification of whether the award is R&D:
- xiv) Indirect cost rate for the Federal award (including if the de minimis rate is charged per 24 CFR 200.414 Indirect (F&A) costs):

3238974.3

CAPITAL IMPROVEMENT LOAN AGREEMENT
BETWEEN THE CITY OF SAN LEANDRO AND
SAN LEANDRO BOYS AND GIRLS CLUB, INC.

This Capital Improvement Loan Agreement (this "Agreement") is entered into as of _____, 2019 ("Effective Date") by and between the City of San Leandro, a California charter city ("City"), and San Leandro Boys And Girls Club, Inc., a California nonprofit corporation ("Borrower"). City and Borrower are hereinafter collectively referred to as the "Parties."

RECITALS

- A. Borrower is a local nonprofit organization that provides services to the community.
- B. Borrower has a right granted by City to occupy and operate its programs and services upon that certain real property located at 401 Marina Boulevard, San Leandro, California, legally described in Exhibit A (the "Property").
- C. Borrower's goal is to construct capital improvements related to the Property, as described under the scope of work, attached hereto as Exhibit B and incorporated herein, including modernizing locker rooms and meeting spaces, as well as other infrastructure upgrades, and seeks City's assistance to accomplish this goal (the "Improvements").
- D. City provides loans to qualified local nonprofit organizations like Borrower in order to assist such organizations with capital improvement projects that serve the public welfare.
- E. As a qualified local nonprofit organization, Borrower is eligible to receive a loan from the City's General Fund to construct the Improvements (the "Loan"), and that providing the Loan to Borrower is in the public interest because Borrower provides public benefits.
- F. Concurrently herewith Borrower shall execute a promissory note (the "City Note") in the amount of the City Loan. This Agreement and the City Note are collectively hereinafter referred to as the "Loan Documents."
- H. The California Environmental Quality Act (Public Resources Code Sections 21000 et seq.) ("CEQA") imposes no conditions on the City's consideration and approval of this Agreement because the Improvements are exempt from CEQA requirements under the categorical exemption set forth in 14 California Code of Regulations Section 15303(b).

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

ARTICLE I
LOAN TERMS; USE AND DISBURSEMENT OF PROCEEDS

1.1 LOAN. City agrees to loan to Borrower, and Borrower agrees to borrow from City a sum of up to Three Hundred Thousand Dollars (\$300,000.00) (the "City Loan") upon the terms and conditions and

for the purposes set forth in this Agreement for construction of Improvements approved by the City. The City Loan shall be evidenced by a City Note, which shall be dated as of the Effective Date.

1.2 REPAYMENT; INTEREST RATE; FORGIVENESS.

1.2.1 LOAN TERM AND REPAYMENT. The Term of this Agreement shall be ten (10) years. Provided that Borrower is not in default under the Loan Documents, the City shall forgive one tenth (1/10th) of the principal of the City Loan, which is equal to Thirty Thousand Dollars (\$30,000.00), annually on the anniversary of the Effective Date of the Agreement. On the tenth (10th) anniversary of the Effective Date, provided that no default or breach by Borrower has occurred pursuant to Article IV, the entire outstanding principal and interest accrued on the City Loan shall be forgiven. If Borrower sells or transfers the Property or changes the use of the Property without written approval from the City, the City Loan shall become due and payable upon sale.

1.2.2 TIMELINE TO SPEND THE LOAN. Borrower shall expend the entire City Loan within twenty-four (24) months of the effective date of this Agreement.

1.2.3 INTEREST. Interest shall accrue on the principal balance of the City Loan at a rate of three percent (3%) simple interest per annum.

1.3 PREPAYMENT. Borrower may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under the City Note. Any prepayment of principal must be accompanied by interest accrued but unpaid to the date of receipt of prepayment. Prepayments shall be applied first to any unpaid late charges and other costs and fees then due, then to accrued but unpaid interest and then to principal.

1.4 USE OF PROCEEDS. Borrower shall use the proceeds of the City Loan (the "City Loan Proceeds") solely and exclusively to pay for the construction of the Improvements described in Exhibit B and in accordance with the budget and timeline specified in Exhibit B.

1.5 DISBURSEMENT OF PROCEEDS. Borrower shall submit separate written requests for each disbursement of City Loan funds with supporting evidence for all amounts requested (each a "Requisition"). Borrower shall submit each Requisition to the Community Development Director, or her/his designee, stating the requisition or invoice number (e.g., Invoice #1) and purpose and amount of the requested disbursement. Borrower shall attach copies of any documents supporting the Requisition, including estimates, bids, receipts, invoices, contracts, payment schedules, or evidence of Borrower's payment of preconstruction and rehabilitation expenses required to fund the Improvements. The supporting documents shall state the time period in which work was performed, and the expenses to be funded with the City Loan Proceeds.

1.6 RESERVED.

1.7 CONDITIONS PRECEDENT TO DISBURSEMENT OF PROCEEDS. City's obligation to disburse the City Loan Proceeds is conditioned upon the satisfaction of all of the following conditions:

(a) Borrower's delivery to City of fully executed Loan Documents;

(b) Borrower's delivery to City of evidence reasonably satisfactory to City that Borrower obtained all necessary permits (including without limitation, building permits), licenses, and approvals required to undertake the Improvements, or that the receipt of such permits is subject only to such conditions as City shall reasonably approve;

(c) City shall have received and approved the final plans and specifications for the Improvements;

(d) City shall have received copies of labor and materials bonds and performance bonds for the construction of the Improvements in an amount equal to one hundred percent (100%) of the scheduled cost of the Improvements.

(e) Borrower's delivery to the City of evidence of insurance coverage in accordance with the requirements set forth in this Agreement;

(f) Borrower's delivery to City of such documentation as City shall reasonably require regarding Borrower's organizational status and authority to execute and perform Borrower's obligations under the Loan Documents;

(g) Borrower's delivery to City of all of the following: (i) Improvements budget; (ii) construction contract; (iii) other assurance of completion reasonably acceptable to City; and (iv) copies of such other documents related to the development and financing of the Improvements as City may reasonably request; and

(h) No material adverse change as determined by City in its reasonable judgment shall have occurred in the condition of the Property or the Improvements or in the financial or other condition of Borrower since the date of this Agreement.

1.8 NO OBLIGATION TO DISBURSE PROCEEDS UPON DEFAULT. Notwithstanding any other provisions of this Agreement, the City shall have no obligation to disburse any portion of the City Loan Proceeds if there is an occurrence of an Event of Default (defined below) under the Loan Documents.

ARTICLE II CONSTRUCTION OF THE IMPROVEMENTS

2.1 CONSTRUCTION SCHEDULE. Borrower shall adhere to the schedule attached hereto under the Scope of Work as Exhibit B. Borrower must obtain written approval from the City for any changes to the construction schedule.

ARTICLE III AFFIRMATIVE COVENANTS

3.1 USE OF FUNDS. Borrower covenants that it shall use the City Loan Proceeds solely for the purpose of financing the construction of the Improvements in accordance with Section 1.4.

3.2 COMPLIANCE WITH LAWS. Borrower covenants to comply with all federal, state and local laws, regulations, ordinances and rules applicable to the Property and the Improvements, including without

limitation, all applicable requirements of state and local building codes and regulations, and all applicable statutes and regulations relating to accessibility for the disabled.

3.3 INSURANCE. Borrower shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Borrower, its agents, representatives, employees, contractors or subcontractors. Consistent with the following provisions, Borrower shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work. Borrower shall maintain the insurance policies required by this section throughout the term of this Agreement. Borrower shall not allow any contractor to commence work until Borrower has obtained all insurance required herein for the contractor and provided evidence to the City that such insurance is in effect. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Borrower shall maintain all required insurance listed herein for the duration of this Agreement.

A. Workers' Compensation. Borrower shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Borrower. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$1,000,000 per accident. In the alternative, Borrower may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City. The insurer, if insurance is provided, or the Borrower, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

B. Commercial General and Automobile Liability Insurance.

1) General requirements. Borrower, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than \$2,000,000 per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

2) Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition), Code 1 (any auto). No endorsement shall be attached limiting the coverage.

- 3) Additional requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:
 - a. The Insurance shall cover on an occurrence or an occurrence basis, and not on a claims-made basis.
 - b. City, its officers, officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Borrower; or automobiles owned, leased, hired, or borrowed by the Borrower.
 - c. For any claims related to this Agreement or the work hereunder, the Borrower's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be in excess of the Borrower's insurance and shall not contribute with it.
 - d. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the City.

C. All Policies Requirements.

- 1) Acceptability of insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.
- 2) Verification of coverage. Prior to commencing or authorizing the commencement of any work under this Agreement, Borrower shall furnish City with complete copies of all policies delivered to Borrower by the insurer, including complete copies of all endorsements attached to those policies. All copies of policies and endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Borrower beginning work, it shall not waive the Borrower's obligation to provide them.
- 3) Deductibles and Self-Insured Retentions. Borrower shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees, and volunteers; or the Borrower shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- 4) Wasting Policies. No policy required by this Section shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

5) Waiver of Subrogation. Borrower hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Borrower agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the Borrower, its employees, agents, and subcontractors.

D. Subcontractors. Borrower shall include, or require its general or prime contractor to include, all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

The City Risk Manager may approve a variation in those insurance requirements upon a determination that the coverages, scope, limits and forms of such insurance are either not commercially available or that the City's interests are otherwise fully protected.

3.4 MAINTENANCE. Participant shall maintain the Improvements to the City's standards and repair Improvements at Participant's own expense for a period of not less than ten (10) years after completion thereof.

3.5 INDEMNIFICATION. Borrower shall indemnify, defend (with counsel reasonably acceptable to City), and hold harmless the City and its respective elected and appointed officials, officers, agents, and employees (collectively the Indemnitees"), from and against, and shall pay on demand, any and all losses, liabilities, damages, costs, claims, demands, penalties, fines, orders, judgments, injunctive or other relief, expenses and charges (including attorneys' fees and expenses of attorneys) (collectively "Liabilities") arising directly or indirectly in any manner in connection with or as a result of (a) any breach of Borrower's covenants under the Loan Documents, (b) any failure of Borrower's representations and warranties to be true and correct in all material respects when made, (c) injury or death to persons or damage to property or other loss occurring on the Property, whether caused by the negligence or any other act or omission of Borrower or any other person or by negligent, faulty, inadequate or defective design, building, construction or maintenance or any other condition or otherwise, or (d) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee which relates to or arises out of the Property, the Improvements, the City Loan, the Loan Documents, or any transaction contemplated thereby, or any failure of Borrower to comply with all applicable state, federal and local laws and regulations, including without limitation, applicable provisions of the California Building Standards Code, the Prevailing Wage Laws, and the Americans with Disabilities Act in connection with the construction or operation of the Improvements, provided that no Indemnitee shall be entitled to indemnification under this Section for matters caused by such Indemnitee's gross negligence or willful misconduct. The obligations of Borrower under this Section shall survive the expiration or termination of this Agreement and the making and repayment of the City Loan.

3.6 OBLIGATION TO REFRAIN FROM DISCRIMINATION. Borrower shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Borrower covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no

discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or part thereof, nor shall Borrower or any person claiming under or through Borrower establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in, of, or for the Property or part thereof. Borrower shall include such provision in all deeds, leases, contracts and other instruments executed by Borrower, and shall enforce the same diligently and in good faith.

All deeds, leases or contracts made or entered into by Borrower, its successors or assigns, as to any portion of the Property or the Improvements shall contain the following language:

(a) In Deeds, the following language shall appear:

"Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of a person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land."

(b) In Leases, the following language shall appear:

"The lessee herein covenants by and for the lessee and lessee's heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein leased."

(c) In Contracts

"There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to selection, location, number, use or occupancy of tenants, lessee, subtenants, sublessees or vendees of the land."

3.7 USE OF PROPERTY: A Borrower may not change the use or planned use of any such property (including the beneficiaries of such use) from that for which the Improvements were made unless the Borrower provides the City with reasonable notice of, and opportunity to comment on, any proposed change.

3.8 TAXES AND OTHER LIABILITIES. Borrower shall pay and discharge when due any and all indebtedness, obligations, assessments, taxes, including federal and state payroll and income taxes which are the obligations of Borrower in relation to the Property or the Improvements except those that Borrower may in good faith contest or as to which a bona fide dispute may arise, provided provision is made to the satisfaction of City for eventual payment thereof in the event that it is found that the same is an obligation of Borrower.

3.9 HAZARDOUS MATERIALS.

3.9.1 Covenants. Borrower shall not cause or permit any Hazardous Materials (as defined below) to be brought upon, kept, stored or used in, on, or about the Property by Borrower, or the agents, employees, contractors or invitees of Borrower except for materials commonly used in construction activities similar to those related to the Improvements, or in the operation and maintenance of the Property and the Improvements, in each case in compliance with all applicable laws, and shall not cause any release of Hazardous Materials into, onto, under or through the Property. If any Hazardous Material is discharged, released, dumped, or spilled in, on, under, or about the Property and results in any contamination of the Property or adjacent property, or otherwise results in the release or discharge of Hazardous Materials in, on, under or from the Property, Borrower shall promptly take all actions at Borrower's sole expense as are necessary to comply with all Environmental Laws (as defined below).

"Hazardous Materials" means any substance, material or waste which is or becomes regulated by any federal, state or local governmental authority, and includes without limitation (i) petroleum or oil or gas or any direct or indirect product or by-product thereof; (ii) asbestos and any material containing asbestos; (iii) any substance, material or waste regulated by or listed (directly or by reference) as a "hazardous substance", "hazardous material", "hazardous waste", "toxic waste", "toxic pollutant", "toxic substance", "solid waste" or "pollutant or contaminant" in or pursuant to, or similarly identified as hazardous to human health or the environment in or pursuant to, the Toxic Substances Control Act [15 U.S.C. 2601, et seq.]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, et seq.], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, et seq.], the Resource Conservation and Recovery Act [42 U.S.C. 6901, et seq.], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, et seq.], the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, et seq.], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, et seq.], the California Hazardous Waste Act [California Health and Safety Code Section 25100, et seq.], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 25249.5, et seq.], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, et seq.], as they now exist or are hereafter amended, together with any regulations promulgated thereunder; (iv) any substance, material or waste which is defined as such or regulated by any "Superfund" or "Superlien" law, or any Environmental Law; or (v) any other substance, material, chemical, waste or pollutant identified as hazardous or toxic and regulated under any other federal, state or local environmental law, including without limitation, asbestos, polychlorinated biphenyls, petroleum, natural gas and synthetic fuel products and by-products.

"Environmental Law" means all federal, state or local statutes, ordinances, rules, regulations, orders, decrees, judgments or common law doctrines, and provisions and conditions of permits, licenses and other operating authorizations regulating, or relating to, or imposing liability or standards of conduct

concerning (i) pollution or protection of the environment, including natural resources; (ii) exposure of persons, including employees and agents, to Hazardous Materials (as defined above) or other products, raw materials, chemicals or other substances; (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities; (iv) the manufacture, use or introduction into commerce of chemical substances, including without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal; or (v) the use, release or disposal of toxic or hazardous substances or Hazardous Materials or the remediation of air, surface waters, groundwaters or soil, as now or may at any later time be in effect, including but not limited to the Toxic Substances Control Act [15 U.S.C. 2601, et seq.]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, et seq.], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, et seq.], the Resource Conservation and Recovery Act [42 U.S.C. 6901, et seq.], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, et seq.], the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, et seq.], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, et seq.], the California Hazardous Waste Act [California Health and Safety Code Section 25100, et seq.], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 25249.5, et seq.], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, et seq.], as they now exist or are hereafter amended, together with any regulations promulgated thereunder.

3.10 PREVAILING WAGES. Borrower shall pay and shall cause Borrower's contractor and subcontractors to pay prevailing wages in the construction of the Improvements as those wages are determined pursuant to Labor Code Section 1720 et seq. and the regulations adopted pursuant thereto ("Prevailing Wage Laws") and shall comply or shall cause the contractor and subcontractors to comply with all other applicable provisions of the Prevailing Wage Laws. Borrower shall maintain or shall cause the contractor and subcontractors to maintain such records as are necessary to determine if prevailing wages have been paid as required pursuant to the Prevailing Wage Laws during the construction of the Project. Borrower shall cause the contractor to post at the Property the applicable prevailing rates of per diem wages. Borrower shall indemnify, defend (with counsel approved by City) and hold the Indemnitees harmless from and against all Liabilities which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages (including without limitation, all claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code sections 1726 and 1781), the failure to comply with all applicable state and federal labor laws, regulations and standards in connection with the construction of the Project, including but not limited to the Prevailing Wage Laws, or any act or omission of Borrower or Borrower's contractors and subcontractors with respect to the payment or requirement of payment of prevailing wages, whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that City does not, and shall not, waive any rights against Borrower which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or the deposit with City, of any of the insurance policies described in this Agreement. The provisions of this Section shall survive the expiration or termination of this Agreement and the making and repayment of the City Loan.

ARTICLE IV
NEGATIVE COVENANTS

Borrower covenants and agrees that for the life of this Agreement, Borrower will not, without prior written consent of the City:

4.1 USE OF FUNDS. Use any of the proceeds of the City Loan except for the purpose(s) stated in Section 1.4 of this Agreement.

4.2 ENCUMBER THE PROPERTY. Create nor suffer to exist any mortgage, lien, charge, or encumbrance, including liens arising from judgments on the Property. This includes Workers' Compensation, unemployment, Internal Revenue Service, state, local, mechanic, and any other liens of any type; provided however, that Borrower shall have thirty (30) days to discharge or provide adequate security for any involuntary lien upon the Property except that which may be in the ordinary course of business to obtain a line of credit or letters of credit.

4.3 MERGER, CONSOLIDATION, SALE OF ASSETS. Merge into or consolidate with any corporation or other entity, or acquire all or substantially all of the assets of any other corporation or entity; or sell, lease, assign, transfer or otherwise dispose of all or substantially all Borrower's assets.

4.4 LOANS, ADVANCES, INVESTMENTS. Make any loan or advances to or investments in, any person or entity except those usually made in the ordinary course of business.

ARTICLE V DEFAULT AND REMEDIES

5.1 EVENTS OF DEFAULT. The occurrence of any one or more of the following events shall constitute an event of default hereunder ("Event of Default"):

(a) Participant removes the Improvements from the Property, or fails to maintain the Improvements and the Property according to the City's standards, or fails to promptly make repairs in violation of Section 3.4.

(b) Any representation or warranty contained in this Agreement or any certificate furnished in connection with the foregoing or in connection with any request for disbursement of City Loan Proceeds proves to have been false or misleading in any respect when made.

(c) Borrower defaults in the performance of any term, provision, covenant or agreement (other than an obligation enumerated in this Article V) contained in this Agreement or unless a shorter cure period for such default is specified herein, the default continues for ten (10) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default after the date upon which City shall have given written notice of the default to Borrower (or such longer time as City may agree upon in writing), provided that in each case Borrower commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith.

(d) Borrower becomes insolvent or shall cease to pay its debts as they mature or voluntarily files a petition seeking reorganization of, or the appointment of a receiver, trustee, or liquidation for it or a substantial portion of its assets, or to effect a plan or other arrangement with creditors, or shall be adjudicated bankrupt, or shall make voluntary assignment for the benefit of creditors.

(e) An insolvency petition is filed against Borrower under any bankruptcy, insolvency, or similar law or seeking the reorganization of or the appointment of a receiver, trustee, or liquidator for Recipient, or of a substantial part of the property of the Recipient's, or a writ or warrant of attachment or similar process shall be issued against a substantial part of the property of Recipient, and such petition shall not be dismissed, or such writ or warrant of attachment or similar process shall not be released or bonded, within sixty (60) days of filing of levy.

5.2 REMEDIES AND RIGHTS UPON DEFAULT. Upon the occurrence of an Event of Default, City shall have all remedies available to it under law or equity, including, but not limited to the following, and City may, at its election, without notice to or demand upon Borrower, except for notices or demands required by law or expressly required pursuant to this Agreement, exercise one or more of the following remedies:

- a) Seek specific performance to enforce the terms of this Agreement;
- b) Accelerate and declare the balance of the City Note and interest accrued thereon immediately due and payable;
- c) Pursue any and all other remedies available under any other Loan Document;
- d) Terminate Borrower's right to use or occupy the Property. Borrower understands that the Property is owned by the City, and expressly acknowledges and agrees that an Event of Default shall give the City the right to terminate Borrower's right to use or occupy the Property, notwithstanding Borrower's rights under any other agreement regarding use of the Property.
- e) Pursue any and all other remedies available under law to enforce the terms of this Agreement and City's rights hereunder.

5.3 REMEDIES CUMULATIVE. Each of the remedies provided herein is cumulative and not exclusive of, and shall not prejudice any other remedy provided herein. The City may exercise from time to time any rights and remedies available to it under applicable law, in addition to, and not in lieu of, any rights and remedies expressly granted in this Agreement or in any other instrument or notice, demand or legal process of any kind.

ARTICLE VI
RESERVED

ARTICLE VII
MISCELLANEOUS

7.1 NOTICES. All notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Party in accordance with this Section. All such notices sent by personal delivery shall be deemed delivered upon receipt and all notices sent first class, postage prepaid, return receipt requested shall be deemed delivered five (5) business days after deposit in the United States mail.

City: City of San Leandro

835 E. 14th Street
San Leandro, CA 94577
Attn: Community Development Director

Borrower: San Leandro Boys And Girls Club, Inc.
401 Marina Blvd.
San Leandro, CA 94577
Attn: Executive Director

7.2 COUNTERPARTS. This Agreement may be executed in multiple counterparts each of which shall be an original and all of which taken together shall constitute one and the same instrument.

7.3 SEVERABILITY. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties are materially altered or abridged by such invalidation, voiding or unenforceability.

7.4 LEGAL ACTIONS; ATTORNEYS' FEES. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, the Party prevailing in any such action shall be entitled to recover against the other Party all reasonable attorneys' fees and costs incurred in such action.

7.5 CAPTIONS; INTERPRETATION. The captions of the Sections and Articles of this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party. Time is of the essence in the performance of this Agreement.

7.6 PARTIES NOT CO-VENTURERS. At all times during the term of this Agreement, Borrower shall be an independent contractor and shall not be an employee of City. City shall have the right to control Borrower only insofar as the results of Borrower's services rendered pursuant to this Agreement; however, City shall not have the right to control the means by which Borrower accomplishes services rendered pursuant to this Agreement. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

7.7 GOVERNING LAW; VENUE. This Agreement shall in all respects be construed and enforced in accordance with laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement must be filed in Alameda County, State of California, or the Northern District of California.

7.8 WAIVER; MODIFICATION AND AMENDMENT. No failure or delay on the part of the City in exercising any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy hereunder. No modification or waiver of any provision of this Agreement, nor any consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in writing, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on the Borrower in any case shall entitle

the Borrower to any other or further notice or demand in similar or other circumstances. No amendment to or modification of this Agreement shall be effective unless and until such amendment or modification is in writing, properly approved in accordance with applicable procedures, and executed by the Parties.

7.9 ASSIGNMENT PROHIBITED. Borrower shall not assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

7.10 NO THIRD PARTY BENEFICIARIES. There shall be no third party beneficiaries to this Agreement.

7.11 ENTIRE AGREEMENT; EXHIBITS. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior or contemporaneous oral or written agreements and negotiations between the Parties with respect thereto. Exhibits A through G attached hereto are incorporated herein by reference as though fully set forth herein. Notwithstanding any other agreement to the contrary, the Parties hereto acknowledge and agree that the City owns the underlying land, identified as the Property, and Participant owns and operates the Improvements that are upon the Property. The City may, upon a breach or default of this Agreement, terminate Participant's right to be upon the Property.

7.12 SURVIVAL. All representations made by Borrower herein and the provisions of Section 3.5 hereof shall survive the expiration or earlier termination of this Agreement and the making of the City Loan. The representations of Borrower made herein have been or will be relied upon by the City, notwithstanding any investigation made by the City or on its behalf.

7.13 ACTION BY THE CITY. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, or consent by the City is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City Manager or by any person who shall have been designated by the City Manager, without further approval by the City Council. City shall use reasonable best efforts to respond to requests for any such approval, notice, direction, or consent in a timely manner.

7.14 NON-LIABILITY OF CITY OFFICIALS, EMPLOYEES AND AGENTS. No member, official, employee or agent of the City shall be personally liable to Borrower or any successor in interest to any of the foregoing in the event of any default or breach by the City, or for any amount of money which may become due to Borrower or Borrower's successor in interest or for any obligation of City under this Agreement.

7.15 BINDING UPON SUCCESSORS. Borrower hereby subjects its interest in the Property and the Improvements to the covenants and restrictions set forth in this Agreement.

IN WITNESS WHEREOF, the Parties have each caused this Agreement to be duly executed as of the date first written above.

PARTICIPANT:

San Leandro Boys And Girls Club, Inc.

By: _____
Executive Director

Date: _____

CITY:

CITY OF SAN LEANDRO

By: _____
Jeff Kay, City Manager

ATTEST:

Leticia Miguel, City Clerk

APPROVED AS TO FORM:

Richard D.Pio Roda, City Attorney

APPROVED AS TO BUDGET:

David Baum , Finance Director

Account Number:

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT B

SCOPE OF WORK, SCHEDULE & BUDGET

3239132.3