CITY OF LOMPOC

May 14, 2014

Ted Sten, Foreman
Grand Jury Room/County Courthouse
1100 Anacapa Street
Santa Barbara, CA 93101

RE: City of Lompoc – Sub-Recipient Financial, Programmatic, and Monitoring Reporting Requirement Policy

The above mentioned policy is submitted to the Grand Jury as the City of Lompoc's final response to the 2012 Grand Jury Report entitled "A Failure of Oversight Report – Lompoc Housing and Community Development Corporation."

The City of Lompoc's previous response to the Grand Jury's report dated September 4, 2012, stated that the City would adopt a policy that ensured compliance with covenants and require audit reviews for affected organizations (sub-recipients) receiving $50,000 or more of City funding. The Grand Jury Report suggested compliance efforts be focused on Non-Profit Housing organizations. The City of Lompoc has broadened its focus and has adopted a policy which takes a comprehensive approach to the City's oversight of organizations receiving City funding. The City's compliance policy also requires the submittal of audits from those sub-recipients receiving over $50,000 in funding. The policy provides guidance and direction to decision makers and staff on methods and procedures to increase adherence and compliance to rules and regulations governing the use of public funds, provided by, or passed through, the City of Lompoc to the Sub-recipients.

Staff has incorporated recommendations from a wide-range of sources, to ensure the policy encourages adherence to the applicable provisions of the State Health and Safety Code and all other applicable laws, rules, and regulations of the associated funding sources used to assist an organization or project, as well as the Lompoc Municipal Code. The policy establishes the guidelines and requirements of each applicable contract and grant compliance management, for those Sub-recipients affected, as well as providing direction in evaluating and reporting instances of non-compliance. The policy has been adopted by Resolution 5916(14), and has been added to the City of Lompoc's Administrative Procedures Manual, Chapter 45, Issue 1.

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The enclosed policy has undergone a rigorous review that included publicly noticed meetings, public comment, Human Service Commission review, an Ad-Hoc Committee review as well as legal review. The result is the "Sub-Recipient Financial, Programmatic, and Monitoring Reporting Requirement Policy", (attached) which will be reviewed periodically and updated as appropriate.

If you have any questions regarding this policy please contact Teresa Gallavan, Economic Development Director/Assistant City Administrator at 805.875.8274.

Respectfully submitted,

John H. Linn, Mayor
City of Lompoc

/lw

Encl: Resolution No. 5916(14)
Policy

c: Honorable Arthur A. Garcia, Presiding Judge
City Council Members
Patrick Wiemiller, City Administrator
Teresa Gallavan, Economic Development Director/Asst City Administrator
Brad Wilkie, Management Services Director
Christie Alarcon, Community Development Manager
Linda Wertman, Redevelopment Program Coordinator
Joseph Pannone, City Attorney
Martin McKenzie, Grand Jury Counsel
Human Service Commission

CERTIFIED COPY

RESOLUTION NO. 5916(14)

A Resolution of the Council of the City of Lompoc, County of Santa Barbara, State of California, Approval of the Administrative Procedures Manual Chapter 45 – Issue 1

WHEREAS, at the September 4, 2012, City Council meeting, the Council authorized the creation of a City policy regarding audit of all recipients of City funds in excess of $50,000 in response to the Santa Barbara County Grand Jury (Grand Jury) report, "*A Failure of Oversight – Lompoc Housing and Community Development Corporation;*" and

WHEREAS, the Council has taken steps to formulate such a policy and now desires to adopt such a policy as part of the Lompoc Administrative Procedures Manual.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LOMPOC, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The Lompoc Administrative Procedures Manual Chapter 45 – Issue 1 (Exhibit A), is hereby adopted by the City of Lompoc, effective July 1, 2014.

SECTION 2. Staff is directed to finalize and submit a copy of the approved Chapter of the Administrative Procedures Manual to the Santa Barbara County Grand Jury.

The foregoing Resolution was proposed by Council Member Starbuck, seconded by Council Member Costa, and was duly passed and adopted by the Council of the City of Lompoc at its regular meeting on May 6, 2014, by the following vote:

AYES: Council Member(s): Dirk Starbuck, Ashley Costa, Bob Lingl, DeWayne Holmdahl, and Mayor John Linn.

NOES: Council Member(s): None

ABSENT: Council Member(s): None

John H. Linn, Mayor
City of Lompoc

ATTEST:

Stacey Alvarez, City Clerk
City of Lompoc

I HEREBY CERTIFY THAT THE foregoing instrument is a true and correct copy of the original on file in the Lompoc City Clerk's Department.
ATTEST:

Exhibit A: Lompoc Administrative Procedures Manual Chapter 45 – Issue 1

Chapter 45

Issue 1 May 6, 2014

SUBJECT: SUB-RECIPIENT FINANCIAL, PROGRAMMATIC, AND MONITORING REPORTING REQUIREMENT POLICY:

I. STATEMENT OF PURPOSE

The City of Lompoc recognizes the value provided to the community by Sub-recipients (as defined below) and the wider policy goal of Federal and State regulations and laws that promote the use of Federal, State and Local resources to extend the affordability of housing for residents, and fund organizations that provide community resources and services that improve the quality of life for area residents.

This Sub-recipient Financial, Programmatic, and Monitoring Reporting Requirement Policy (Policy) provides guidance and direction to decision makers and staff on methods and procedures to increase adherence and compliance to rules and regulations governing the use of public funds, provided by or passed through the City of Lompoc to the Sub-recipients. The Policy encourages adherence to the applicable provisions of the State Health and Safety Code and all other applicable laws, rules, and regulations of the associated funding sources used to assist an organization or project, and the Lompoc Municipal Code.

The Policy strives to mitigate the risks of loss, both financial and material, to improve enforcement of contractual terms and conditions, and to determine if organizations and providers adequately adhere to their contracts and agreements by providing the services in accordance with those agreements.

The Policy will establish the guidelines and requirements of contract and grant compliance management, for those Sub-recipients affected by this Policy and provides direction in evaluating and reporting instances of non-compliance.

II. SCOPE

The procedures contained in the Policy are established to provide general instructions for comprehensive reporting, tracking and review of existing and potential non-profit partners, affordable housing providers, and affordable housing developers (collectively, Sub-recipients) funded by the City, who provide services that are not core to the nature of local government, but promote the wider community goals and those of the associated Federal and State housing agencies.

City assistance to Sub-recipients involves specific service delivery standards, financial commitments, and other legal terms and conditions. The complexity of those relationships requires contracts and grants that clearly outline the specific obligations to all parties, as well as management oversight, reporting, and compliance processes that ensure programmatic and financial accountability. Standardized language identifying requirements of the Policy should be incorporated into all future applicable contracts, agreements, and documents, along with any required program or contractual compliance requirements.

The Policy identifies essential City practices that will ensure that when the City enters into a contract or awards a grant to a Sub-recipient, the terms, conditions, financial responsibility, and performance outcomes are met in a way the public can be satisfied is of the highest legal and ethical standard.

The following areas identify three different aspects of funding to Sub-recipients:

A. The financial conditions the Sub-recipient must meet to be reimbursed by the City for existing or potential expenses incurred currently and/or in the future;

B. The compliance of Sub-recipients with any and all contractual obligations required of the entity for the term of the contract or agreement, and the delivery of the services or products per contract; and

C. The general topics related to City finance and compliance.

These three aspects are further defined and expanded upon in the following sections.

III. SUB-RECIPIENT DEFINED

For the purposes of this Policy a Sub-recipient is defined as an affordable housing organization organized primarily to provide for lower-income residential, transitional, and homeless housing needs, non-profit agencies providing community services, and organizations that receive funding through the City by way of grants or loans.

Affordable housing is a general term applied to public- and private-sector efforts designed to assist lower-income people with access to available government and privately-funded housing programs and other services that meet their unique needs, including shelters and transitional housing. Some City funded Sub-recipients offer housing-related assistance to people of lower incomes, thereby augmenting the City's overall objective of meeting its affordable housing priorities.

IV. APPLICABILITY

All Sub-recipients funded by the City are subject to the requirements of their individual City contracts, agreements, and funding sources. The Policy contains requirements that may fully or partially apply to those Sub-recipients as part of their program and contract compliance measures. The Policy contains additional financial reporting requirements for those Sub-recipients that receive more than $50,000 of City funding in any single fiscal year.

For those organizations subject to the audit requirement of this Policy, there is an opportunity to apply for a downgraded financial reporting submittal (such as certified financial statements prepared by a Certified Public Accountant or signed tax returns), if the organization can demonstrate that providing an audit in the time period required would cause an economic hardship.

The downgraded financial reporting request would be submitted on an annual basis, and would be approved or denied by a Compliance Committee. The Compliance Committee shall be comprised of five members: one member of the City's Economic and Community Development Department; one member from the City's Management Services Department; an annually rotating member from the Human Services Commission; an annually rotating member of the City Council; and the City Administrator or designee. The Committee is subject to the Brown Act and Public Records Act. The audit downgrade does not dismiss other contractual obligations of this Policy or the individual contracts and agreements between the organization and the City of Lompoc.

The audit submittal requirement of this Policy does not apply to entities or Sub-recipients receiving funds for City services obtained through standard procurement procedures or those organizations contracted by the City to provide services that would otherwise be required to be carried out by the City. For example, contracts for services or purchase orders for materials or professional services by the City would not be subject to the Policy.

V. FINANCIAL PROCEDURES

Reporting obligations of City funded Sub-recipients meeting the financial reporting requirements identified by this Policy, must submit either an audit, certified financial statements prepared by a Certified Public Accountant, or a signed completed IRS tax return form with an information release. According to the amount of funding received and the requirements of the individual contracts or agreements, any Sub-recipient, whose grant or loan exceeds $50,000 in any fiscal year, is required to submit an independent audit, unless a lesser reporting requirement is approved by the Compliance Committee, as discussed in Section IV. above.

A. Sub-recipient Financial Reporting Responsibilities

1. To be a valid current report, the date of the audited financial statements shall be within the time requirements of the Office of Management and Budget Circular 133 (OMB-133). Generally, those timeframes are as follows:

   The Sub-recipient is required to submit two copies of the annual audit report, certified financial statements, or signed IRS tax return form, one to the City of Lompoc's Management Services Department and one to the Economic and Community Development (ECD) Department (100 Civic Plaza, Lompoc, CA 93436), electronically (preferred) or in hard copy. Required reports are due within 90 days after the close of the organization's reporting period, but no later than **March 31** of the following year.

2. Audits shall be conducted by an independent auditor qualified to conduct audits of Sub-recipients. The Sub-recipient shall provide the necessary authorization to its independent auditor to allow the City to determine the auditor's qualifications or to discuss the Sub-recipient's financial condition.

3. The financial cost of audits shall not be directly borne by the City. The organization requesting funds from the City must utilize any resources available to it to complete the audit, including resources received from the City.

4. It is the responsibility of each Sub-recipient to notify the City if it becomes aware of any change in circumstances that would delay or negate the obligation to report under this Policy, including approval of a downgraded financial report as a substitute for the audit requirement by the Compliance Committee.

5. In addition to the annual reporting requirements, the applicable Sub-recipient organization subject to the audit, IRS tax return form, or Certified Financial Statements submittal, is required to submit those documents to the City in conjunction with any application for funding. The specific application for funds may indicate the specific reporting requirements.

B. City Financial Reporting Responsibilities

1. Sub-recipients subject to the Policy will be provided a courtesy notice from the City if the required reports are not received 30 days prior to the date due for that Sub-recipient's annual or financial report (generally due March 15).

2. Sub-recipients who fail to submit their required audits, annual reports, financial reports, or tax returns by the March 15 deadline will receive a First Notice from the ECD Department reiterating the requirement for submittal of the appropriate report and providing notice it must be received on or before April 15. Those Sub-recipients that have not submitted the required reports by April 15 will then be provided a Second Notice to comply on or before April 30. The Second Notice will include the final due date of April 30 and language that Sub-recipient's deficient status will be reported to the City Council if a response is not received on or before April 30. (If any of the dates set forth in this Subsection B. is a day City Hall is closed to the public, then that date will be extended to the next immediate date City Hall is open to the public.)

3. Sub-recipients subject to the Policy that do not comply with the Second Notice will be deemed to be non-compliant. Staff will then request all non-compliant Sub-recipients submit a compliance plan outlining the steps and timeframe necessary to bring their organization into compliance with the Policy within 10 days after the date of compliance with the Second Notice. All plans will need to be approved by City staff and must bring the Sub-recipient into compliance no later than June 30. Failure to meet this requirement will expose the organization to the options listed in Section V.B.7. below.

4. Audited financial statements, certified financial Statements, and IRS tax return forms obtained as a result of the Policy will be kept on file for five years following the length of the contractual financial obligation with the Sub-recipient.

5. The City's Management Services Department will provide an Audit Compliance and Findings Report to the ECD Department and City Administrator by **May 15** of each year, listing all Sub-recipients that must comply with the audit portion of the Policy. The Audit Compliance and Findings Report will detail the status of the audit submittal and highlight and discuss any audit exceptions or concerns the auditor may have noted in the audit, as well as other financial documents submitted as a requirement of the contract, agreement, or funding requirement, such as certified financial statements, or tax return submittals. Submitted financial documents will be reported as either:

   a. Audit, certified financial statements, or tax return submitted timely with no exceptions, or submitted timely with exceptions.

   b. Audit, certified financial statements, or tax return submitted (but not timely) with no exceptions, or submitted (but not timely) with exceptions.

   c. Audit, certified financial statements, or tax return ***not*** submitted.

6. An annual compliance report will be presented to the City Council at a public meeting at least annually by the ECD Department staff at the second meeting of July each year or soon thereafter. Staff will provide the City Council with a written status report on Sub-recipient compliance mid-year for the periods of January 1 through June 30, and July 1 through December 31, of each calendar year.

7. The City Administrator, upon receiving notification from the City's Management Services Department and/or the ECD Department of any non-compliant findings, will notify Council of those findings and provide recommended options for consideration. Consideration and possible action regarding the findings report will then be scheduled (within 60 days of the date Council is notified), as an agenda item for discussion. Council will take appropriate action unless **a *super majority* vote** of the Council agrees to not take action.

   Recommended options include, but are not limited to:

   a. Forfeiture of any remaining unpaid grant or loan funds;

   b. Repayment of previously paid grant or loan funds;

   c. Prohibition from applying for, or receiving funds from the City in the future, until such time that the City deems the Sub-recipient to be compliant with the conditions of the Policy;

   d. Any other legal actions available to the City; and

   e. Any other legal actions as outlined in the original agreement (loan documents, contracts, applications, etc.) for funding.

8. The Human Services Commission Compliance Policy is incorporated into this Policy and reads as follows:

   "All agencies, which are entering into contracts with the City of Lompoc whether financial or service based, must be in compliance with all City of Lompoc conditions as outlined in the contract in order to qualify for City Human Services funding. An agency designated to receive funding but deemed non-compliant in any contract with the City of Lompoc, will have said human services funding withheld until compliance is achieved, as determined by City staff. Compliance must be achieved no later than the 3rd quarter of the City's fiscal year in which funding was awarded. Forfeiture of any funding by the end of the 3rd quarter will be reallocated in the 4th quarter by the City Council based on recommendations by the Human Services Commission."

Incorporation of the Human Services Commission policy does not bind nor make the Human Services Commission responsible for any portion of this Policy. For the purpose of incorporation of the Human Service Policy to this policy note that the term Agency has the same meaning as Sub-recipient in this policy, and to qualify for City funding the same requirements exist as with the Human Service funding in regard to withholding funds and qualifying for those funds.

The Compliance Committee will make a recommendation to the City Council for action based on the reallocation of funding as listed in the Human Services Commission policy above, recommended options as listed in Section V.B.7. of this Policy, or other appropriate options that may be available for consideration.

9. Funding requirements to carry out the provisions of the Policy shall be requested by the City's Economic Development Director/Assistant City Administrator and Management Services Director through the standard biennial budgeting process. Funding sources may include: federal housing grant funding, if available; loan servicing fees collected from housing loans, if available; other housing funds, such as the administrative allowance in the Housing Trust Fund, if available; and other sources identified in the budgeting process. Monitoring funding may also be derived through future affordable housing project fees assessed at the time of funding approval to offset affordability monitoring costs and costs related to the management and enforcement of the Policy.

VI. PROGRAMMATIC PROCEDURES

Reporting obligations of City funded Sub-recipients are drafted in accordance with, but not limited to, U.S. Department of Housing and Urban Development's (HUD) Community Development Block Grant (CDBG) and HOME program, the State of California's Department of Housing and Community Development (HCD), and other local, state and federal programmatic requirements.

A. Compliance Reviews:

Compliance reviews will be conducted in accordance with the terms of the applicable agreement and adherence to applicable regulations. Sub-recipient compliance is determined by City staff by providing in-house reviews, annual report reviews, financial reporting reviews and compliance, and site monitoring visits. The Management Services Director will be ultimately responsible for the compliance of financial reporting contained in the Policy. The Economic and Community Development Director/Assistant City

Administrator will be ultimately responsible for programmatic, contractual, and compliance monitoring decisions.

1. Site monitoring: Site visits are primarily conducted to document findings that identify programmatic accomplishments and identify recommendations for compliance. Staff will focus on the following areas:

   a. Compliance with the Sub-recipient agreement;

   b. Verification of record keeping to confirm compliance with regulations;

   c. Review of the Sub-recipient's data collection process to ensure the process utilized will result in accurate reporting information to the City by Sub-recipient;

   d. Adherence to non-discrimination laws, regulations, and standards;

   e. Insurance requirements;

   f. Procurement requirements;

   g. Financial management systems;

   h. Current Sub-recipient Board Members and staff records;

   i. Status of progress to achieving stated goals and delivering services; and

   j. Property exterior and interior maintained in a satisfactory manner. All housing units shall meet the Housing Quality Standards (HQS) at the minimum or HUD's replacing standards as the minimum standards. Exterior maintenance shall meet the City's standards, contractual requirements, landscape maintained in a safe manner and generally the property shall be free of debris.

2. In-house reviews: Conducting In-house reviews, the ECD Department will focus and confirm the following:

   a. Invoice and Payment Requests:

      i. The accuracy of the invoice amounts;
      ii. The services have been satisfactorily received and accomplishments documented;
      iii. The invoice does not overlap or duplicate a previously submitted invoice;
      iv. The quality of the submitted required documentation;

v. The timeliness of invoices and payment submittal; and
vi. The approval and payment processing was appropriate. The monitoring will take place at the time the Sub-recipient submits a request for payment and is evidenced by the approval of the payment request.

b. Each Sub-recipient and grant/loan file will be monitored semi-annually to ensure and document the Sub-recipient has or is carrying out its activities in accordance with the requirements and the primary objectives of the contract and with applicable laws, rules and regulations. The file shall be reviewed to ensure the proper documentation is present that represents all contractual obligations, programmatic requirements, and City processes are being followed, as well as dated documentation that the file review occurred and who reviewed it.

3. Risk Level and Capacity: City staff will also periodically assess the risk level of each Sub-recipient and determine if that Sub-recipient continues to demonstrate the capacity to carry out its obligations in a timely manner. Assessment will be comprised of, but not limited to, the following:

   a. Review of any changes in circumstances that may affect the timeliness, quality, or cost of providing services or delivery of a project;

   b. The loss of key staff, economic cycles, and other organizational changes;

   c. Substantial loss of funding to that Sub-recipient or loss due to non-compliance, and noncompliance with other City contracts.

   If a Sub-recipient is found to have questionable capacity, then staff will request Sub-recipient to submit substantive proof of current compliance and organizational capacity with the Policy, whether in a written report or by any other means of evidence to determine compliance. If the information received does not demonstrate compliance and capacity, then that information will be made available to the City Administrator and the Management Services Department for further review and determination if the risk warrants action by the City Attorney and/or report to City Council.

4. For purposes of conducting annual report monitoring for multi-family affordable housing projects under covenant with the City, each appropriate Sub-recipient that has restricted multi-family units under covenant with the City will be required to submit an Annual Report comprised of the following:

a. Rent roll: Signed by the owner/manager of the affordable housing project attesting to the accuracy of the report on December 31 of each compliance year. The report shall include, but not be limited to, the following:

   i. Project address, number of total units in project, and number of units restricted by City regulatory agreement(s) identified by funding sources (*i.e.,* RDA, CDBG, HOME, Housing Trust Fund, etc.);
   ii. Tenant names and unit numbers; and
   iii. Each tenant and unit line item shall indicate the tenant's move-in date, household size, gross rents, utility allowance (if applicable), net rent, any public subsidy received by tenant (*i.e.*, Section 8, or other tenant-based assistance), and net amount of rent paid by tenant less any subsidy received;

b. Confidential Tenant Surveys: Surveys will be completed by tenants attesting to the accuracy of the information provided. The Tenant Surveys will be provided to the owner and/or management company annually by the City, and distributed and collected by the owner/manager. The owner/manager will countersign the surveys, verifying the income verification mechanism on file at the management office and submit to the ECD Department with the rent rolls. The City will also accept completed Tenant Income Certification (TIC) forms used by the State of California or other federal programs that contain the same information in-lieu of the City-provided tenant certification forms; and

c. Explanation of any special conditions (if applicable), and contact information if additional information or clarification is required.

5. For purposes of conducting annual report monitoring for owner occupancy of single-family affordable housing projects under covenant with the City:

   a. The ECD Department staff will send out ownership surveys each year to all property owners that have owner-occupancy and/or maintenance restrictions on their homes; and

   b. The owners of the single-family affordable housing projects must sign the City-provided survey attesting they are occupying the unit and provide a current utility bill demonstrating occupancy, along with any additional documentation requested by the ECD Department. The property owner will submit the required documentation to the City in a timely manner, but not later than March 31.

Results of the annual monitoring compliance, in-house and site monitoring compliance reviews will be kept on file for the length of the contract and five years thereafter.

B. Sub-recipient Programmatic Compliance Responsibilities

Maintenance of adequate documentation and compliance with the provisions of the City contract are critical measures of the effectiveness of a Sub-recipient. The collection, organization and retention of information and documentation includes the following:

1. Knowledge of what information needs to be collected and why;

2. When that information should be collected and how often;

3. How the information should be acquired, organized, and stored;

4. How and when the information should be reported; and

5. Required retention period for records.

In instances where there are claimed "extenuating circumstances" that have delayed compliance with the audit provisions of the Policy, the Sub-recipient must provide a written explanation and applicable documentation to substantiate such claims (within 10 working days after receipt of the Second Notice of non-compliance from the City). The written explanation will include a detailed corrective action plan specifying the actions to be taken to achieve policy compliance, applicable timeframes for such compliance and steps to be taken to avoid reoccurrence of such circumstances in the future. The City's ECD Department shall be notified of all changes to that process in order to ensure compliance continues once the plan is developed and approved. See Section V.B.3.

C. City Programmatic Reporting Responsibilities

1. The ECD Department will work in tandem with the Management Services Department to provide a Compliance Report on or about July 15, regarding all Sub-recipient agencies that fall within the scope of the Policy and shall identify each as being either compliant or non-compliant. The report will also include any executed or proposed changes to Memorandum of Understandings, Contracts, Loan Agreements or Covenants during the current compliance period. The report shall be presented at a regularly scheduled meeting of the City Council by July 31 each year.

2. Sub-recipients subject to the Policy will be provided a courtesy notice by the City if current audited programmatic documentation has not been received within 30 days prior to the date due for that Sub-recipient's programmatic reporting.

3. Sub-recipients who fail to respond by providing current programmatic documentation by the due date (on or before March 15), will be provided a First Notice requesting documentation demonstrating compliance be provided within 30 days, but not later than April 15. The Second Notice will include a final due date on or about April 30 (15 days) to provide all required documentation, or Sub-recipient will be reported to City Administrator as being non-compliant. (If any of the dates set forth in this Subsection 3. is a day City Hall is closed to the public, then that date will be extended to the next immediate day City Hall is open to the public.)

4. The ECD Department will notify the City Administrator of any Sub-recipient found to be non-compliant with this provision.

5. City Administrator, upon receiving notification from the ECD Department of any findings, will notify the City Council of those findings and provide recommended options. Consideration and possible action regarding the findings report will then be scheduled (within 60 days after the date of the City Council notification). Council will take appropriate action, unless **a *super majority* vote** of the Council agrees to not take action.

   Recommended options include, but are not limited to:

   a. Forfeiture of any remaining unpaid grant or loan funds;

   b. Repayment of previously paid grant or loan funds;

   c. Prohibition from applying for, or receiving funds from the City in the future, until such time the City deems the agency to be compliant with the conditions of this provision;

   d. Any other legal actions available to the City; and

   e. Any other legal actions as outlined in the original agreement (loan documents, contract, application, etc.) for funding.

VII. GENERAL

In order to avoid an over reliance on a single Sub-recipient for the provision of City-funded affordable housing services, the City will actively seek to partner with qualified Sub-recipients that can demonstrate a successful track record of

compliant service. The City will also actively seek to find more than one Community Housing Development Organization (CHDO) for the City.

A. Contract Consistency

The City is committed to ensure the full scope of service requirements and legal obligations required by the applicable funding programs are articulated in contracts in a consistent, concise, and legally defensible manner. Therefore, all such contracts will be developed with the City Attorney and any applicable City department. The City will develop templates whenever possible, with standardized language reflecting the compliance requirements of this Policy.

B. Order of Deed of Trust Recordation and Covenant Position

Unless otherwise specifically allowed by the City Council or the City Administrator, or under an established program, all documents that are to be recorded as a requirement of the applicable funding program, shall strive to obtain the highest possible priority over any non-governmental covenants, deeds of trust, or other documents recorded against the real property securing financing for the applicable Sub-recipient. The determination to allow a different priority shall be considered on a case-by-case basis taking into consideration, but not limited to, the public benefit, financial stability of the Sub-recipient, project viability, and the proportional amount of City financing in the project. The submitted information shall be evidenced by financial instruments such as proformas, income statements, and/or any other document or financial instrument required by the City. The risk level of a lower prioritized lien position will be reported to the City Council during the request for funding.

C. Existing Contracts – Subordination and Refinancing

No Sub-recipient regulated by this Policy may secure a re-subordination of any existing City loan that would change the original lien or covenant position without City Council approval. No Affordability Covenant required by the City's Conditions of Approval for project entitlement will be subordinated to a financing entity.

Subject to the approval of the City Council, any equity resulting from the re-subordinations of an existing loan must be applied to the property it was taken from and used for property improvements, deferred maintenance, upgrades, reduction of senior debt, tax liens on the property, or placed in a dedicated maintenance reserve, unless otherwise approved by the City Council by a ***super majority*** vote.

All subordinations that result in a City lien becoming junior to another lender, thus reducing the City's loan-to-value and increasing the City's risk, will require the requesting lender to sign an Intercreditor Agreement prepared by the City Attorney, unless otherwise authorized by the City Council. The Intercreditor Agreement requires the senior lien-holder request City funds be repaid as well as the senior lien-holder's, in the event of a default or foreclosure action by the senior lender.

D. Civil Remedies

The City Administrator has the authority to direct the City Attorney to pursue any and all civil, legal, and equitable remedies available for each failure of a Sub-recipient to comply with the Policy or terms and conditions of the funding provided by the City which is subject to the Policy. The City Administrator also has authority to discuss any such failure with the City Council prior to providing that direction. As counsel to the City, the City Attorney has the ethical obligation to discuss litigation with the City Council. As the governing board of the City, the City Council has the authority and duty to stay informed about litigation brought in the City's name and at the City's expense. If the City Council, after a duly noticed public meeting, determines it is in the best public interest not to pursue or continue civil legal remedies against the applicable Sub-recipient, then the City Council may so direct the City Administrator and City Attorney.

E. Sub-recipient Training

The City's Community Development Program Manager shall, periodically, but not less than annually, schedule and coordinate training of each Sub-recipient (and related landlords, and property managers) who owns or controls any real property subject to any affordability, maintenance or other property-related covenant for the benefit of the City. Within 60 days after receiving notice an affordable property is changing ownership or management, the Economic and Community Development Program Manager or her/his designee will meet with and schedule new property owners and managers for training on compliance reporting and City covenant requirements. Mandatory training for CDBG and Human Service grant application submittal will be scheduled on an annual basis and will be publicly noticed via mail, e-mail, published in the local newspaper, and City's Website, as well as other sites where regular notices are posted.

F. General Reporting

1. To document compliance with financial reporting requirements, loan terms, affordability covenants, property maintenance, and other information deemed necessary to ensure compliance, City staff will develop reports that will track and monitor affordable housing projects,

Sub-recipients funded with Human Service monies, ECD Department loans, and CDBG-funded Capital Improvement Projects that have monitoring components as a result of the funding utilized. The information will be compiled in reports similar to Program Monitoring Requirement Report (Exhibit A) and Program Monitoring Status Report (Exhibit B) that will be updated periodically and modified as needed. A Compliance Report will be posted annually on the City's Website after submittal and presentation of the Annual Compliance Status Report to the City Council and the public (generally on or about July 31 of each year).

VIII. APPLICATION FOR FUNDS – REQUIRED APPLICATION DISCLOSURES AND REQUIREMENTS

Applications for funds and any loan agreements, if applicable, shall have disclosure and reporting requirements that include the following:

A. Contact information for the Sub-recipient's audit firm, Certified Public Accountant, and tax preparer;

B. A release providing the City the right to contact the Sub-recipient's audit firm, Certified Public Accountant, and/or tax preparer and IRS regarding compliance with the Policy;

C. Sub-recipients are required to notify the City of any change in their audit firms not later than 60 days after the change; and

D. Authorization for the City to submit annual audit reports or certified financial statements to a qualified independent audit firm to determine the ability of the Sub-recipient to comply with fiscal requirements as stipulated in the contract and/or loan agreement.

The salient portions of this Policy will be incorporated in Sub-recipient contract and/or loan agreements including but not limited to:

A. Financial Procedures;

B. Programmatic Procedures;

C. Order of Recordation and Covenant Position;

D. Civil Remedies;

E. Sub-recipient Training; and

F. Sub-recipient Reporting Requirements.

Authorized: _____ _____
City Administrator Date

Exhibits: A) Program Monitoring Requirement Report – Example
B) Program Monitoring Status Reports – Example