

File No. 221075

Committee Item No. 12

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee
Board of Supervisors Meeting

Date November 2, 2022
Date _____

Cmte Board

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OTHER (Use back side if additional space is needed)

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Completed by: Brent Jalipa Date October 27, 2022

Completed by: Brent Jalipa Date _____

1 [Grant Agreement - Mercy Housing California - Sunnydale HOPE SF Community Building -
2 1500 Sunnydale Avenue - Not to Exceed \$11,000,000]

3 **Resolution approving and authorizing the Director of the Mayor’s Office of Housing**
4 **and Community Development to execute a Grant Agreement with Mercy Housing**
5 **California, a nonprofit California public benefit corporation for a total grant amount**
6 **not to exceed \$11,000,000 for a term of 55 years effective upon execution of the**
7 **Grant Agreement, to finance the construction of an approximately 28,000 square foot**
8 **community center, consisting of an 8,000 square foot childcare center; a 12,000**
9 **square foot space for the San Francisco Boys and Girls Club, and an 8,000 square**
10 **foot neighborhood space that will include community rooms and outdoor space,**
11 **which will be known as Sunnydale HOPE SF Community Building; and adopting**
12 **findings that the grant agreement is consistent with the adopted Mitigation**
13 **Monitoring and Reporting Program under the California Environmental Quality Act,**
14 **the General Plan, and the eight priority policies of Planning Code, Section 101.1.**

15
16 WHEREAS, HOPE SF is the nation’s first large-scale public housing transformation
17 collaborative aimed at disrupting intergenerational poverty, reducing social isolation, and
18 creating vibrant mixed-income communities without mass displacement of current residents;
19 and

20 WHEREAS, HOPE SF, the City’s signature anti-poverty and equity initiative, is
21 committed to breaking intergenerational patterns related to the insidious impacts of trauma
22 and poverty, and to creating economic and social opportunities for current public housing
23 residents through deep investments in education, economic mobility, health and safety; and

1 WHEREAS, The Housing Authority of the City and County of San Francisco (“SFHA”)
2 owns and operates 775 units of public housing on the approximately 50-acre site, known as
3 Sunnydale-Velasco; and

4 WHEREAS, In 2007, SFHA issued a Request for Proposals (“RFP”), seeking
5 submittals from qualified respondents to develop the Sunnydale HOPE SF Master Plan; and

6 WHEREAS, Mercy Housing California a California nonprofit public benefit corporation
7 (“Mercy”), in collaboration with the Related Company, a California corporation (“Related”),
8 jointly responded to the RFP and were selected to be the developer for the Sunnydale HOPE
9 SF Master Plan; and

10 WHEREAS, Mercy and Related established a separate entity named Sunnydale
11 Development Co., LLC (the “Master Developer”) under which to plan and develop the
12 Sunnydale HOPE SF Master Plan; and

13 WHEREAS, The Sunnydale HOPE SF Master Plan consists of (i) a maximum of 1,770
14 units, of which 775 are replacement units for existing Sunnydale-Velasco households,
15 approximately 200 are additional affordable housing units, and up to 730 units will be for
16 market rate homeownership or rental, (ii) all new streets and utility infrastructure, (iii) 3.6 acres
17 of new open spaces, and (iv) approximately 60,000 square feet of new neighborhood serving
18 spaces; and

19 WHEREAS, By Ordinance No. 18-17, the Board of Supervisors approved a
20 Development Agreement with the Master Developer relating to the Sunnydale HOPE SF
21 Master Plan Site (the "Development Agreement") under Administrative Code Chapter 56,
22 which Ordinance is on file with the Clerk of the Board of Supervisors in File No. 161164 and is
23 incorporated herein by reference; and

24 WHEREAS, By Ordinance No. 20-17, the Board of Supervisors made findings under
25 the California Environmental Quality Act (Public Resources Code, Sections 21000 et seq.)

1 and findings of consistency with the General Plan, and the eight priority policies of Planning
2 Code, Section 101.1, which Ordinance is on file with the Clerk of the Board of Supervisors in
3 File No. 161309 and is incorporated herein by reference; and

4 WHEREAS, A subsidiary of the Master Developer will lease the property located at
5 1500 Sunnydale Avenue, San Francisco (“Premises”), from SFHA under a long term ground
6 lease; and

7 WHEREAS, The City, acting through the Mayor’s Office of Housing and Community
8 Development (“MOHCD”), administers a variety of community development programs,
9 including grants to community based organizations for the construction and improvement of
10 community serving spaces such as public spaces and community buildings, in San Francisco;
11 and

12 WHEREAS, MOHCD enters into grant agreements with community based
13 organizations; administers grant agreements; reviews monitoring reports; monitors
14 compliance with City requirements; and if necessary, takes appropriate action to enforce
15 compliance; and

16 WHEREAS, The Master Developer desires to commence construction of an
17 approximately 28,000 square foot community center on the Premises, which will be known as
18 the “Sunnydale HOPE SF Community Building,” consisting of an 8,000 square foot childcare
19 center, a 12,000 square foot space for the San Francisco Boys and Girls Club, and an 8,000
20 square foot neighborhood space that will include community rooms and outdoor space
21 (collectively, the “Project”); and

22 WHEREAS, To leverage equity from an allocation of new markets tax credits and a
23 capital fundraising campaign in order for the Sunnydale HOPE SF Community Building
24 Developer to construct the Project, MOHCD desires to provide a grant in the amount not to
25 exceed \$11,000,000 for a term of 55 years effective upon execution of the Grant Agreement,

1 to the Mercy Housing California pursuant to a Grant Agreement (“Agreement”) in substantially
2 the form on file with the Clerk of the Board in File No. 221075, and in such final form as
3 approved by the Director of MOHCD and the City Attorney; and

4 WHEREAS, The Premises will be restricted to public benefit uses for no less than 55
5 years under a recorded Declaration of Restrictions in substantially the form on file with the
6 Clerk of the Board in File No. 221075, and in such final form as approved by the Director of
7 MOHCD and the City Attorney; now, therefore, be it

8 RESOLVED, That the Board of Supervisors hereby adopts the findings contained in
9 Ordinance 20-17 regarding the California Environmental Quality Act for the Project, and
10 hereby incorporates such findings by reference as though fully set forth in this Resolution;
11 and, be it

12 FURTHER RESOLVED, That the Board of Supervisors hereby finds that the Project is
13 consistent with the General Plan, and with the eight priority policies of Planning Code,
14 Section 101.1 for the same reasons as set forth in Ordinance 20-17, and hereby incorporates
15 such findings by reference as though fully set forth in this Resolution; and, be it

16 FURTHER RESOLVED, That the Board of Supervisors hereby approves the
17 Agreement and authorizes the Director of MOHCD or his or her designee to enter into any
18 amendments or modifications to the Agreement (including, without limitation, preparation and
19 attachment, or changes to, any of all of the exhibits and ancillary agreements) and any other
20 documents or instruments necessary in connection therewith that the Director determines, in
21 consultation with the City Attorney, are in the best interest of the City, do not materially
22 increase the obligations or liabilities for the City or materially diminish the benefits of the City,
23 are necessary or advisable to effectuate the purposes and intent of this Resolution and are in
24 compliance with all applicable laws, including the City Charter; and, be it

1 FURTHER RESOLVED, That the Board of Supervisors hereby authorizes and
2 delegates to the Director of MOHCD and/or the Director of Property, and their designees, the
3 authority to undertake any actions necessary to protect the City's interest in the Property as a
4 community space and enforce such restrictions, which may include, without limitation,
5 acquisition of the Property upon foreclosure and sale at a trustee sale, acceptance of a deed
6 in lieu of foreclosure, or curing the default under a senior loan; and, be it

7 FURTHER RESOLVED, That all actions authorized and directed by this Resolution and
8 heretofore taken are hereby ratified, approved, and confirmed by this Board of Supervisors;
9 and, be it

10 FURTHER RESOLVED, That within thirty (30) days of the Agreement being fully
11 executed by all parties, MOHCD shall provide the final Agreement to the Clerk of the Board
12 for inclusion into the official file.

1 Recommended

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3 /s/ _____

4 Eric D. Shaw, Director
5 Mayor's Office of Housing and Community Development

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<p>Item 12 File 22-1075</p>	<p>Department: Mayor’s Office of Housing and Community Development (MOHCD)</p>
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EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would authorize the Mayor’s Office of Housing and Community Development (MOHCD) to execute a grant agreement with Mercy Housing California for \$11 million to finance the construction of the Sunnydale HOPE SF Community Building.
- The proposed resolution would also find that the grant agreement is consistent with the adopted Mitigation and Monitoring Reporting Program under CEQA, the General Plan, and the eight policy priorities of Planning Code Section 101.1.

Key Points

- The Sunnydale-Velasco HOPE SF site is the City’s largest public housing site. It sits on 40 acres and contains 775 public housing units. In 2007, the City issued a Request for Proposals (RFP) for a developer for the Sunnydale HOPE SF site and awarded the contract to Mercy Housing and Related Company, which then formed Sunnydale Development Company LLC. In 2017, the Board approved Sunnydale Development Company’s plans for the site, which include 1,400-1,700 units of public, affordable, and market rate housing; new streets and utility infrastructure; 3.6 acres of new open spaces; and 60,000 square feet of new neighborhood serving spaces.
- Mercy Housing is planning to begin construction on the 28,000 square foot Sunnydale HOPE SF Community Building. The Community Building would include the Wu Yee childcare center, a space for the San Francisco Boys and Girls Club, and a space for multi-purpose community rooms, a community kitchen, and an outdoor courtyard.

Fiscal Impact

- The proposed \$11 million grant is funded by the General Fund.
- Total project costs are \$40.4 million and is being financed by a mixture of New Market Tax Credits, a contribution from Mercy Housing, and the proposed \$11 million grant from MOHCD.

Policy Consideration

- The cost of construction per square foot is \$1,165 or 70 percent more than the estimated national average cost per square foot of recreation projects. According to MOHCD, the costs for the Community Building have been approved by other funders of the project as well as MOHCD.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

BACKGROUND

HOPE SF

In 2007, the City launched HOPE SF, an anti-poverty program to rebuild and reinvest in four of the City’s public housing developments. The program aims to take 1,900 existing public housing units across four developments – Alice Griffith and Hunters View in the Bayview, Potrero Terrace and Annex in Potrero Hill, and Sunnydale-Velasco in Visitacion Valley – and rebuild them into 5,300 units at multiple levels of affordability. All four sites have broken ground and expected completion of the entire program is in 2035.

Sunnydale-Velasco

The Sunnydale-Velasco site is the City’s largest public housing site. It sits on 40 acres with 775 public housing units. In 2007, the San Francisco Housing Authority, the owner of Sunnydale-Velasco, issued a Request for Proposals (“RFP”) for the development of the Sunnydale HOPE SF Master Plan and selected Mercy Housing California in collaboration with Related Company to create the Master Plan and develop the property. Mercy Housing and Related Company formed a separate entity called Sunnydale Development Company LLC (“Sponsor”) to develop the property. In 2017, the Board of Supervisors approved the Sponsor’s Master Plan (File 16-1309), adopted findings under California Environmental Quality Act (“CEQA”) (File 16-1309), and executed a master development agreement with the Sponsor to develop the property (File 16-1356). The Master Plan includes up to 1,770 units of public, affordable, and market rate housing, new streets and utility infrastructure, 3.6 acres of new open spaces, and 60,000 square feet of new neighborhood serving spaces.

Now, as part of Phase 1A-3 of the Master Plan, the Sponsor plans to build a 28,000 square foot community center, the Sunnydale HOPE SF Community Building (“Community Building”), at 1500 Sunnydale Avenue. The Community Building would include the Wu Yee childcare center; a space for the San Francisco Boys and Girls Club; and a space for multi-purpose community rooms, a community kitchen, and an outdoor courtyard. The Sponsor selected Swinerton as the contractor through a competitive solicitation process. Construction is expected to be completed in 2024.

New Market Tax Credits

The Sponsor plans to finance the Community Building using a mixture of New Market Tax Credits, a contribution from Mercy Housing, and grants. New Market Tax Credits are a form of financing that provides tax credits to investors in exchange for funding for community development projects. New Market Tax Credit amounts are authorized by Congress and then allocated to

qualified community development entities by the US Treasury Department. The San Francisco Community Investment Fund (“SFCIF”) is a legally separate entity from the City and is a qualified community development entity that has applied for and received separate allocations of New Market Tax Credits, including one in 2018 and one in 2020.

On April 4, 2022, the SFCIF authorized a sub-allocation of New Market Tax Credits to the Sunnydale HOPE SF Community Building project of no more than \$28 million (SFCIF Resolution No. 81-2022).

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize MOHCD to execute a grant agreement with the Mercy Housing California for \$11 million to finance the construction of the Community Building. The term of the grant agreement would be 55 years from the effective date of the agreement which is the standard term for all MOHCD grants and loans.

The proposed resolution would also find that the grant agreement is consistent with the adopted Mitigation and Monitoring Reporting Program under CEQA, the General Plan, and the eight policy priorities of Planning Code Section 101.1.

The construction cost estimate for the project was completed by Swinerton, the contractor. Exhibit 1 below shows the total costs and for the Community Building.

Exhibit 1: Community Building Total Costs

Item	Amount
Construction	\$32,642,500
Soft Costs	5,380,273
Financing	876,227
Project Administration	383,000
Other Fees	1,070,000
Total	\$40,352,000

Source: MOHCD & BLA

Exhibit 1 shows that the total cost of the Community Building is \$40.35 million, including \$32.6 million in construction costs. Exhibit 2 below details the funding sources being used to finance this project. Based on a 28,000 square foot development, construction costs are approximately \$1,165 per square foot.

Exhibit 2: Community Building Funding Sources

Item	Amount
MOHCD General Fund Grant	\$11,000,000
New Market Tax Credits	13,141,440
Mercy Housing California	19,474,224
NMTC Fees	(3,263,664)
Total	\$40,352,000

Source: Proposed Grant Agreement

Exhibit 2 shows that, in addition to the proposed \$11 million grant from MOHCD, additional funding sources for the \$40.35 million project are \$13.1 million in New Market Tax Credits and \$19.47 million in investments from Mercy Housing.

Declaration of Restrictions

The San Francisco Housing Authority will maintain ownership of the land and the Sponsor will enter into a long-term ground lease at no costs. While the City will not own the land or improvements contemplated in the proposed grant agreement, a declaration of restrictions will be recorded on the property to limit its use to community serving purposes.

FISCAL IMPACT

The proposed resolution would authorize MOHCD to issue a grant to the Sponsor for \$11 million. The grant would come from MOHCD's FY 2022-23 General Fund budget allocation.

POLICY CONSIDERATION

According to a report by The Gordian Group, the national average for hard construction costs for recreation projects were \$375 per square foot in 2018.¹ Using TBD Consultants' Construction Cost Management Bid Index,² we assumed 83% construction cost escalation between 2018-2022 and estimated that current average hard construction costs for housing in the Bay Area are \$686 per square foot. The Sunnydale Community Building's construction cost is \$1,165 per square foot, or 70 percent more than estimated average recreation center costs nationally. According to

¹ "Construction Project Costs," The Gordian Group (2018). Related, according to the "The Hard Costs of Construction: Recent Trends in Labor and Materials Costs for Apartment Buildings in California," a report from Turner Center for Housing Innovation (2020), housing construction costs in the Bay Area in 2018 were \$380 per square foot.

² TBD Consultants Q2 Bid Index (2022).

MOHCD, the costs for the Community Building have been reviewed and approved by San Francisco Community Investment Fund and the New Market Tax Credit investors.

RECOMMENDATION

Approve the proposed resolution.



City and County of San Francisco
Mayor's Office of Housing and Community Development
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

Office of Economic and Workforce Development
City Hall, Room 448
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Grant Agreement Packet

Agency Name: Agency Name
Agency DUNS Number: Agency DUNS Number
Program Area: Program Area
Program Year(s): 2022-2023
Project ID: Project ID [without suffix]
Project Description: Sunnydale HOPE SF Community Building
Grant Period: _____, 2022 Agreement
Total Grant Amount: \$11,000,000
Source: General Funds

Awarding Agency and Contact Information:
Mayor's Office of Housing and Community Development
Grants Coordinator: Helen Hale
Phone Number: 415-701-5566
Email Address: Helen.Hale@sfgov.org

**GRANT AGREEMENT
(FY 2022-2023)**

between

CITY AND COUNTY OF SAN FRANCISCO

and

Mercy Housing California, a California nonprofit public benefit corporation

THIS GRANT AGREEMENT (this “Agreement”) is made this _____, 2022 (“Start Date”), in the City and County of San Francisco, State of California, by and between **Mercy Housing California**, a California nonprofit public benefit corporation (“Grantee” or “Contractor”), and the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (“City”), acting by and through the Mayor’s Office of Housing and Community Development (“MOHCD”).

WITNESSETH:

WHEREAS, Grantee has submitted a grant application to MOHCD seeking a grant for the purpose of funding the matters set forth in the Work Program (as defined below);

WHEREAS, this Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21G.3 through a Request for Qualifications for HOPE SF (“RFQ”) issued on October 17, 2007, in which City and the Housing Authority of the City and County of San Francisco (the “Authority”) selected Grantee as the highest qualified scorer pursuant to the RFQ; and

WHEREAS, City has reviewed the grant application and, in reliance on the accuracy of the statements in that application, has agreed to grant certain funds to Grantee on the terms and conditions set forth in this Agreement;

WHEREAS, Grantee understands and acknowledges that City is using this Agreement including funds from City’s general fund, as amended;

WHEREAS, the funding source for this grant is identified on the first page of this Agreement;

WHEREAS, Grantee understands and agrees that all of the provisions below apply to this Agreement, except any provisions that expressly provide that they are limited to a particular funding source which is not the source of the funds for this Agreement (as identified on the first page of this Agreement);

WHEREAS, Grantee seeks funds for the Work Program, as defined below, and City agrees to provide such funds, on the terms and conditions set forth herein; and,

WHEREAS, City and Grantee acknowledge and agree that Grantee does not own or operate the Project (as defined below) and instead has another interest in the Project satisfactory to the City, using a common Federal New Markets Tax Credit structure (the “NMTC Financing Structure”). A diagram of Grantee’s interest in the Project and the NMTC Financing Structure has been furnished to the City and is attached hereto as Appendix D (the “Structure Chart”), and Grantee shall satisfy the terms and conditions of the Grant Agreement by satisfying or causing the satisfaction of the Project construction, operation, reporting, and other terms and conditions of this Agreement, and

WHEREAS, Grantee will use the Grant Funds to make a leverage loan, the proceeds of which will be used, together with tax credit equity, to make “qualified equity investments” in “qualified community development entities” that will, in turn, make “qualified low-income community investment” loans to finance the Project.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.01 – Specific Terms

Unless the context otherwise requires, the following capitalized terms (whether singular or plural) shall have the meanings set forth below:

“**ADA**” shall mean the Americans with Disabilities Act (including all rules and regulations thereunder) and all other applicable federal, state and local disability rights legislation, as the same may be amended, modified or supplemented from time to time.

“**Application Documents**” shall mean collectively: (i) the RFQ; (ii) the grant application submitted by Grantee, including all exhibits, schedules, appendices and attachments thereto; (iii) all documents, correspondence and other written materials submitted in respect of such grant application; and (iv) all amendments, modifications or supplements to any of the foregoing approved in writing by City.

“**Charter**” shall mean the Charter of City.

“**Close of Escrow**” shall mean the date the Grantee intends to finalize financing documents.

“**CMD**” shall mean the Contract Monitoring Division of the City.

“**Contractor**” shall have the same meaning as “Grantee” if used in this Agreement, as certain City contracting requirements also apply to grants of the City and County of San Francisco.

“**Controller**” shall mean the Controller of City.

“**Declaration of Restrictions**” shall mean the City’s Declaration of Restrictions recorded on the Property requiring certain uses as consistent with the terms of the Ground Lease.

“**Developer**” shall refer to Sunnysdale Development Co., LLC.

“**Development Agreement**” refers to the Development Agreement between the City and County of San Francisco, The Housing Authority of the City and County of San Francisco and Developer recorded in the official records on March 3, 2017, as Document Number 2017-K416604-00.

“**Effective Date**” shall have the meaning set forth in Section 3.01 below.

“**Event of Default**” shall have the meaning set forth in Section 14.01 below.

“**Fiscal Quarter**” shall mean each period of three (3) calendar months commencing on July 1, October 1, January 1 and April 1, respectively.

“**Fiscal Year**” shall mean each period of twelve (12) calendar months commencing on July 1 and ending on June 30 during all or any portion of which this Agreement is in effect.

“**Form H**” shall have the meaning set forth in Section 7.03(C) below.

“**Funding Source**” shall mean the federal, state or city program under which MOHCD receives the funding from which this grant is made.

“**Grant**” shall mean this Agreement.

“Grant Amount” shall mean the total funds authorized for distribution to Grantee under this Agreement, as set forth in Section 5.01 below.

“Grant Funds” shall mean any and all funds allocated or disbursed to Grantee under this Agreement.

“Ground Lease” shall mean the ground lease between the Housing Authority of the City and County of San Francisco as “Lessor” and Sunnydale Avenue Community Center as “Lessee”, dated _____, for the Leased Premises (as defined in the Ground Lease) upon which the Improvements shall be constructed.

“Improvements” shall mean improvements, renovations or rehabilitation funded indirectly in whole or in part with the Grant Amount.

“Indemnified Parties” shall mean: (i) City, including MOHCD and all commissions, departments, agencies and other subdivisions of City; (ii) City’s elected officials, directors, officers, employees, agents, successors and assigns; and (iii) all persons or entities acting on behalf of any of the foregoing.

“Investment Fund” shall mean Sunnydale CC Investment Fund, LLC, a Delaware limited liability company.

“Investor” shall mean Wells Fargo Community Investment Holdings, LLC, a Delaware limited liability company.

“Losses” shall mean any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, judgments, fees, expenses and costs of whatsoever kind and nature (including legal fees and expenses and costs of investigation, of prosecuting or defending any Loss described above) whether or not such Loss be founded or unfounded, of whatsoever kind and nature.

“Master Lease” shall mean that certain [Master Lease] between QALICB, as sublessor, and Grantee, as sublessee, for the Leased Premises.

“MOHCD Program” shall mean the federal, state or local funding program that MOHCD is administering.

“NMTC Financing Structure” shall have the meaning set forth in the Recitals.

“Procedures Manual” shall mean the MOHCD Operating and Procedures Manual, the Capital Implementation Manual, and/or the Small Business Enterprise Program Manual, as appropriate, and as the same may be amended from time to time.

“Project” shall mean the construction of the Sunnydale Community Center located at 1550 Sunnydale Avenue, San Francisco, CA 94134, all in accordance with the Work Program and the Development Agreement.

“Project Budget” shall mean each budget setting forth the uses of Grant Funds for a Work Program identified in Appendix A attached hereto.

“Project Completion” shall mean certificate of occupancy or equivalent certification provided by the City’s Department of Building Inspection, and an architect’s or engineer’s certificate of completion.

“Publication” shall mean any report, article, educational material, handbook, brochure, pamphlet, press release, public service announcement, web page, audio or visual material or other communication for public dissemination, which relates to all or any portion of the Work Program or is paid for in whole or in part using Grant Funds.

“QALICB” shall mean Sunnydale Avenue Community Center, a California nonprofit public benefit corporation.

“QEI” shall mean a “qualified equity investment”, as defined in Section 45D of the Internal Revenue Code of 1986, as amended.

“**Structure Chart**” shall have the meaning set forth in the Recitals.

“**Tenure Period**” shall have the meaning set forth in Section 3.03 below.

“**Value of the Building**” shall mean the reasonable monetary value assigned to the building, such as the value assigned by an independent real estate appraiser.

“**Work Product**” shall have the meaning set forth in Section 4.05 below.

“**Work Program**” shall mean the QALICB’s contracts during a Grant Year identified in Appendix A attached hereto.

Section 1.02 – Incorporation of Funding Source Requirements

Grantee understands and acknowledges the limitations and requirements imposed on Grantee as a result of the Funding Source for this Agreement, as identified on the first page of this Agreement, including applicable federal and/or state regulations and the agreement between City and the federal or state entity, if any, that provided the funds to City for this Agreement. Grantee agrees that all activities taken by Grantee and its agents under this Agreement shall comply with the applicable program requirements and, if Grantee has any questions regarding such requirements Grantee shall (i) look at the applicable program requirements on file at MOHCD, and (ii) seek clarification from MOHCD staff.

Section 1.03 – Additional Terms

The terms "as directed," "as required" or "as permitted" and similar terms shall refer to the direction, requirement or permission of MOHCD. The terms "sufficient," "necessary" or "proper" and similar terms shall mean sufficient, necessary or proper in the sole judgment of MOHCD. The terms "approval," "acceptable" or "satisfactory" or similar terms shall mean approved by, acceptable to or satisfactory to MOHCD. The terms "include," "included" or "including" and similar terms shall be deemed to be followed by the words "without limitation". The use of the term "subcontractor," "successor" or "assign" herein refers only to a subcontractor (“subgrantee”), successor or assign expressly permitted under Article 7.

Section 1.04 – References to this Agreement

References to this Agreement include: (a) any and all appendices, exhibits, schedules, attachments hereto; (b) any and all statutes, ordinances, regulations or other documents expressly incorporated by reference herein; and (c) any and all amendments, modifications or supplements hereto made in accordance with Section 19.02. References to articles, sections, subsections or appendices refer to articles, sections or subsections of or appendices to this Agreement, unless otherwise expressly stated. Terms such as "hereunder," "herein" or "hereto" refer to this Agreement as a whole.

ARTICLE 2 APPROPRIATION AND CERTIFICATION OF GRANT FUNDS; LIMITATIONS ON CITY’S OBLIGATIONS

Section 2.01 – Risk of Non-Appropriation of Grant Funds

This Agreement is subject to the budget and fiscal provisions of the Charter. City shall have no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. Grantee acknowledges that City budget decisions are subject to the discretion of its Mayor and Board of Supervisors. Grantee assumes all risk of possible non-appropriation or non-certification of funds, and such assumption is part of the consideration for this Agreement. Notwithstanding the foregoing, the City and Grantee agree that the funds under this Agreement will be funded in full at close of Close of Escrow.

Section 2.02 – Certification of Controller

Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

Section 2.03 – Automatic Termination for Nonappropriation of Funds

This Agreement shall automatically terminate, without penalty, liability or expense of any kind to City, at Project Completion.

Section 2.04 – Superseding of Conflicting Provisions

IN THE EVENT OF ANY CONFLICT BETWEEN ANY OF THE PROVISIONS OF THIS ARTICLE 2 AND ANY OTHER PROVISION OF THIS AGREEMENT, THE APPLICATION DOCUMENTS OR ANY OTHER DOCUMENT OR COMMUNICATION RELATING TO THIS AGREEMENT, THE TERMS OF THIS ARTICLE 2 SHALL GOVERN.

Section 2.05 – Maximum Costs

Except as may be provided by City ordinances governing emergency conditions, City and its employees and officers are not authorized to request Grantee to perform services or to provide materials, equipment and supplies that would result in Grantee performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies specified in this Agreement unless this Agreement is amended in writing and approved as required by law to authorize the additional services, materials, equipment or supplies. City is not required to pay Grantee for services, materials, equipment or supplies provided by Grantee that are beyond the scope of the services, materials, equipment and supplies agreed upon herein and not approved by a written amendment to this Agreement lawfully executed by City. City and its employees and officers are not authorized to offer or promise to Grantee additional funding for this Agreement that exceeds the maximum amount of funding provided for herein. Additional funding for this Agreement in excess of the maximum provided herein shall require lawful approval and certification by the Controller. City is not required to honor any offered or promised additional funding which exceeds the maximum provided in this Agreement which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained. The Controller is not authorized to make payments on any agreement for which funds have not been certified as available in the budget or by supplemental appropriation.

ARTICLE 3 EFFECTIVE DATE, TERM AND TENURE PERIOD

Section 3.01 – Effective Date

This Agreement shall become effective when (i) duly executed by all of the parties and (ii) the Controller has certified to the availability of funds as set forth in Section 2.02 and MOHCD has notified Grantee thereof in writing (the "Effective Date").

Section 3.02 – Duration of Term

Time is of the essence in this Agreement. The term of this Agreement shall commence on the Start Date of this Agreement. Such term shall end upon Project Completion and upon evidence of expenditure of Grant Funds received indirectly by QALICB for the Project in the form attached as Appendix C to this Agreement. An amount equal to any Grant Funds received indirectly by QALICB and not expended by QALICB for eligible costs on or before the expiration or termination date shall be immediately returned by Grantee to the City, regardless of the reason for the delayed expenditure and regardless of whether Grantee has completed the Work Program.

For all projects that include construction or renovation of facilities, construction must begin as soon as reasonably possible but in no event later than one year after the Effective Date of this Agreement. Without limiting City's right and remedies under this Agreement: (1) City has the right to terminate this Agreement and use Grant Funds it has not yet advanced to Grantee for other purposes at any time before the start of construction, (2) any extension of the term of this Agreement is subject to the prior written approval of MOHCD, which approval may be given or denied

in MOHCD's sole discretion. If Grantee holds any Grant Funds at the time of the expiration or termination of this Agreement, which Grant Funds were not expended for eligible costs before the expiration or termination date, then Grantee shall immediately notify City of the remaining balance of the unexpended Grant Funds. City will decide either to: (1) extend the term and allow the Grant Funds to be used for identified eligible costs; or (2) require the immediate return of the unexpended Grant Funds; and City will notify Grantee in writing of its decision. Grantee shall not expend any Grant Funds during the period between the expiration or termination date and the date that City notifies Grantee of its decision. City acknowledges that all Grant Funds will be used by Grantee at Close of Escrow, together with other funds, to make a loan to the Investment Fund as set forth in the Structure Chart

Section 3.03 – Tenure Period

This Section does not apply if Grantee is acting as an intermediary in administering a rehabilitation, renovation or improvement program or Grantee is not undertaking any such rehabilitation, renovation or improvement program itself.

Notwithstanding the expiration or termination of this Agreement, if the Grant Funds are used for the purchase or improvement of real property, then Grantee shall maintain the acquired or improved property for eligible purposes consistent with the terms of this Agreement for not less than the Tenure Period. The “Tenure Period” of this Agreement is the period of time that starts with the completion of the improvements and that fifty-five (55) years thereafter based on the applicable Grant Funds and Work Program. The City and Grantee agree that Section 3.03 does not apply to the Project.

ARTICLE 4 IMPLEMENTATION OF WORK PROGRAM

Section 4.01 – Implementation of Work Program; Cooperation with Monitoring

A. Grantee shall use the Grant Funds distributed by City under this Agreement solely to fund its leverage loan to the Investment Fund as shown on the Structure Chart. Grantee shall not use the Grant Funds for any other purpose. The QALICB will use the loan proceeds from the NMTC Financing Structure to develop the Project as identified in the Work Program. and in accordance with the associated Project Budget(s) also identified in the Work Program. The Work Program complies with and furthers the purposes of the Development Agreement. The Improvements will be “Privately-Owned Community Improvements” as defined in the Development Agreement. Grantee will not have an ownership interest in the Project or the Improvements, other than via its subleasehold interest under the Master Lease. In the event of a breach of this Agreement with respect to any one or more of the attached Work Programs, MOHCD shall have the right to suspend or terminate this Agreement.

B. Grantee shall, in good faith and with diligence, (i) expeditiously administer and implement the Work Program on the terms and conditions set forth in this Agreement and in accordance with the Project Budget, and (ii) fully and faithfully perform or caused to be performed all duties and tasks necessary to meet the goals set forth in the Work Program through Grantee’s representation on the board of QALICB. Grantee shall not materially change or, to the extent of its authority, permit to be materially changed the nature or scope of any Work Program or Project Budget during the term of this Agreement without the prior written consent of City. Grantee shall promptly comply or, to the extent of its authority, cause the QALICB to comply with all standards, specifications and formats of City under the MOHCD Program, including those set forth in MOHCD’s Capital Implementation Manual (the “Procedures Manual”) previously delivered to Grantee and incorporated herein by this reference, as the same may be updated or amended from time to time, related to evaluation, planning and monitoring of the Work Program and shall cooperate in good faith with City in any evaluation, planning or monitoring activities conducted or authorized by City.

B. Grantee shall, upon request or as appropriate, prepare and make public presentations or conduct public meetings or hearings relative to the accomplishments of the Work Program. Grantee agrees to promptly comply with any request by MOHCD to conduct such presentations or meetings in response to MOHCD or community concerns relating to the Work Program.

Section 4.02 – Grantee’s Personnel

The Work Program shall be implemented only by competent personnel under the direction and supervision of Grantee through Grantee’s representation on the board of the QALICB, as required by the terms of the Agreement.

Section 4.03 – Works for Hire

If, in connection with this Agreement or the implementation of the Work Program, Grantee or any subcontractor creates artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any other original works of authorship or Publications, such creations shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such creations shall be the property of City. If it is ever determined that any such creations are not works for hire under applicable law, Grantee hereby assigns all copyrights thereto to City, and agrees to provide any material, execute such documents and take such other actions as may be necessary or desirable to effect such assignment. With the prior written approval of City, Grantee may retain and use copies of such creations for reference and as documentation of its experience and capabilities. Grantee shall obtain all releases, assignments or other agreements from subcontractors or other persons or entities implementing the Work Program to ensure that City obtains the rights set forth herein.

Section 4.04 – Publications and Work Product

A. Grantee understands and agrees that City has the right to review, approve, disapprove or conditionally approve, in its sole discretion, the work and property funded in whole or part with the Grant Funds, whether those elements are written, oral or in any other medium. Grantee has the burden of demonstrating to City that each element of work or property funded in whole or part with the Grant Funds is directly and integrally related to the Work Program as approved by City. City shall have the sole and final discretion to determine whether Grantee has met this burden.

B. Without limiting the obligations of Grantee set forth in Section 4.03(A) above, Grantee shall submit to City for City's prior written approval any Publication or any training material that Grantee prepares and pays for in whole or part with the Grant Funds under this Agreement and that is included as part of the Work Program, and Grantee shall not disseminate any such Publication or training material unless and until it receives City's consent. In addition, Grantee shall submit to City for approval, if City so requests, any other program material or form that Grantee uses or proposes to use in furtherance of the Work Program, and Grantee shall promptly provide to City one copy of all such materials or forms within two (2) business days following City's request. City’s approval of any material hereunder shall not be deemed an endorsement of, or agreement with, the contents of such material, and City shall have no liability or responsibility for any such contents. City reserves the right to disapprove any material covered by this section at any time, notwithstanding a prior approval by City of such material. Grantee shall not charge for the use or distribution of any Publication or training material funded all or in part with the Grant Funds, without first obtaining City's written consent, which City may give or withhold in its sole discretion.

C. Grantee shall distribute any Publication, training material or other material funded in whole or part with the Grant Funds under this Agreement solely within San Francisco, unless Grantee demonstrates a public benefit to San Franciscans from a broader distribution and City otherwise gives its prior written consent, which City may give or withhold in its sole discretion. In addition, Grantee shall furnish any services funded in whole or part with the Grant Funds under this Agreement solely within San Francisco, unless City otherwise gives its prior written consent, which City may give or withhold in its sole discretion.

D. City may disapprove any element of work or property funded in whole or part by the Grant Funds that City determines, in its sole discretion, has any of the following characteristics: is divisive or discriminatory on a basis prohibited under Section 18.01 below; undermines the purpose of the Work Program; discourages otherwise qualified potential employees or volunteers or any clients from participating in activities covered under the Work Program; undermines the effective delivery of services to clients of Grantee; hinders the achievement of any other purpose of City in making the Grant under this Agreement; or violates any other provision of this Agreement or applicable law. If City disapproves any element of the Work Program as implemented, or requires any change to it, Grantee shall immediately eliminate the disapproved portions and make the required changes. If City disapproves any materials, activities or services provided by third parties, Grantee shall immediately cease using the materials and terminate the activities or services and shall, at City's request, require that Grantee obtain the return of materials from recipients or deliver such materials to City or destroy them.

E. City has the right to monitor from time to time the administration by Grantee or any of its subcontractors of any programs or other work, including, without limitation, educational programs or trainings, funded in whole or part by the Grant Funds, to ensure that Grantee is performing such element of the Work Program, or causing such element of the Work Program to be performed, consistent with the terms and conditions of this Agreement.

F. Grantee acknowledges the importance of the public's understanding of MOHCD efforts. Grantee agrees to identify and publicize newsworthy program accomplishments and activities, and to acknowledge the Funding Source if and when appropriate and possible. In addition, Grantee shall credit MOHCD, and the Funding Source as applicable, in all Publications, press releases, brochures, and other material resulting from activities, events, projects or programs supported with the Grant Funds. Except as set forth in this Section, Grantee shall not use the name of the MOHCD or City (as a reference to the municipal grantee as opposed to location) in any Publication without prior written approval of City.

Section 4.05 – Capital Programs

A. For Work Programs that include construction or renovation activity, Grantee acknowledges that Grant Funds provided under this Agreement are to be used, indirectly, to perform capital improvements, and that such Grant Funds may not be used for subsequent repairs or improvements to the facility following completion of the Work Program. To fund such subsequent work, Grantee shall establish an adequate building repair and maintenance program, subject to review and approval by City that preserves and enhances the life expectancy of the improvements. This may include seeking monies from other sources to establish a building repair/maintenance reserve fund to cover future improvements. No MOHCD monies may be used to fund such reserves.

B. For all construction and rehabilitation projects for which permits are required by the San Francisco Building Code, Grantee will obtain or cause to be obtained the approval of the Mayor's Office on Disability ("MOD") prior to or concurrent with all such applications for Building Permits from the San Francisco Department of Building Inspections unless the project is exempted from MOD review. Projects exempted from MOD review and sign off are those projects that are defined as such in the Capital Implementation Manual published by MOHCD.

ARTICLE 5 USE AND DISBURSEMENT OF GRANT FUNDS

Section 5.01 – Maximum Amount of Grant Funds

Grant Amount: The amount of the Grant Funds authorized for disbursement hereunder shall not exceed \$11,000,000 during the Term of this Agreement, plus any Contingent Amount (as defined below) authorized by City and certified as available by the Controller (collectively, the "Grant Amount"). In no event shall the amount of Grant Funds disbursed hereunder exceed \$11,000,000.

Section 5.02 – Use of Grant Funds

Grantee hereby agrees that Grant Funds disbursed under this Agreement shall be used solely and strictly in accordance with the terms of this Agreement. Grantee shall expend the proceeds of Grant Funds by making a loan, the proceeds of which will be further invested and loaned through a new markets tax credit transaction structure, and ultimately expended in accordance with the Project Budget, and shall obtain the prior approval of City before transferring or, to the extent of its authority, permitting the transfer or expenditures from one line item to another within the Project Budget. Grantee acknowledges and agrees that the availability of Grant Funds allocated under this Agreement is expressly conditioned on Grantee's fulfilling all the provisions of the Work Program in accordance with the Project Budget.

Section 5.03 – Other Funding

MOHCD acknowledges that Grantee will aggregate the Grant Funds with the below sources for the development of the Project. Grantee in its capacity as the sponsor of the Project will support the QALICB to actively seek non-MOHCD funding sources to fund operating costs and cost overruns of the Work Program, to assure continuity and eligibility of the Work Program, and to provide regular maintenance and repair to any facility or equipment. If the Work Program involves construction and the total Work Program costs exceed the Grant Amount, City may

condition approval of any construction contract and/or disbursement of any portion of the Grant Amount upon the provision of satisfactory evidence of the availability of funds to cover such shortfall.

A contribution from Grantee in the amount of _____ and No/100 Dollars (\$[19,474,224.00]), a portion of which in an amount equal to [\$3,455,021] is expected to be bridged by a loan from Low Income Investment Fund (“LIIF”). Grantee’s funds, the proceeds of a loan from LIIF, and the Grant Funds will be used to make a loan to the Investment Fund.

A Federal New Markets Tax Credit equity investment in the Investment Fund in the amount of _____ and No/100 Dollars ([\$13,141,440.00]).

The Investment Fund will use the proceeds of such loan and investment to make “qualified equity investments” of approximately \$28,000,000 in a subsidiary community development entity of San Francisco Community Investment Fund (“SFCIF Sub-CDE”) and approximately \$13,600,000 in a subsidiary community development entity of LIIF (“LIIF Sub-CDE”).

SFCIF Sub-CDE and LIIF Sub-CDE will make loans in the approximate amount of \$40,352,000 to the QALICB to finance the Project.

Section 5.04 – Disbursement Procedures

A. City will disburse the full Grant Amount to Grantee within five (5) business days prior to Close of Escrow to allow Grantee to make a loan to the Investment Fund on the date of Close of Escrow. Grantee shall submit to the City for approval a request for funding (a “Funding Request”), including settlement statement and funding instructions to MOHCD within two weeks prior to Close of Escrow.

B. NO COST INCURRED BY GRANTEE PRIOR TO THE CERTIFICATION OF THIS AGREEMENT WILL BE REIMBURSED, INCLUDING BUT NOT LIMITED TO ARCHITECT OR CONSULTANT FEES INCURRED IN DEVELOPING THE PROJECT BUDGET OR IMPROVEMENT PLANS FOR THE WORK PROGRAM. IN ADDITION, IF THE WORK PROGRAM IS STALLED OR SUSPENDED FOR ANY PERIOD OF TIME, CITY MAY, AT ITS OPTION, REFUSE TO MAKE ANY PAYMENTS HEREUNDER APPLICABLE TO SUCH PERIOD, INCLUDING PAYMENTS FOR SALARIES AND OTHER FIXED ITEMS OF EXPENSE.

C. The City and its employees and officers are not authorized to request Grantee to perform services or to provide materials, equipment and supplies that are beyond the scope of the Work Program unless this Agreement is amended in writing to authorize such additional services, materials, equipment or supplies. The City is not required to pay Grantee for services, materials, equipment or supplies that are provided by Grantee that are beyond the scope of the services, materials, equipment and supplies agreed upon herein and that were not approved by a written amendment to this Agreement having been lawfully executed by the City.

D. The City and its employees and officers are not authorized to offer or promise to Grantee additional funding for this Agreement that would exceed the maximum amount of funding provided for herein. Additional funding for this Agreement in excess of the maximum provided herein shall require lawful approval and certification by the Controller. The City is not required to honor any offered or promised additional funding which exceeds the maximum provided in this Agreement that requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained.

E. After funding of the Grant, Grantee shall submit monthly reports to MOHCD, together with copies of all invoices and other documents supporting (“Pay Applications”) the report. MOHCD will review such Pay Applications for informational and reporting purposes only, and if necessary, will require a physical inspection of the Work Program. For construction contracts, the Grantee shall require the QALICB to withhold a minimum of 10% of each progress payment (the “Retained Amount”) pending final Work Program completion. The Retained Amount will be paid upon Grantee’s and MOHCD’s receipt of a certified Notice of Completion, appropriate lien

waivers or releases, a Request for Final Payment together with copies of all invoices and other documents supporting that request, and any other documents or instruments reasonably requested by MOHCD. City shall have no obligation to appropriate funds, and City's obligation to make payments hereunder shall automatically terminate, without cost or liability of any kind to City, upon City's termination of this Agreement.

F. The City's sole obligation under this Agreement shall be to act in good faith to administer the MOHCD Program and to make disbursements as it deems appropriate pursuant to the terms of this Agreement. The City shall not, under any circumstances, be liable for any delay in disbursement or for any delay or failure to approve or disburse funds.

G. In the event of any dispute between Grantee and any contractor, lessor or other third party relating to the Work Program, Grantee shall immediately inform the City of the dispute and all information relative to the dispute. The City shall have no responsibility for resolving disputes between Grantee and its contractor or lessor pertaining to the Work Program, nor shall the City be obligated to make any disbursements during the period that the City determines such a dispute exists. In the event any such dispute is not resolved within ninety (90) days, the City may, at its option, immediately suspend or terminate this Agreement and the City shall not be obligated to approve any pay applications with respect to the disputed work; provided, however, Grantee shall not be obligated to return any funds which have been disbursed by the City and properly applied by Grantee for permitted expenses under this Agreement.

H. Any and all Pay Application approvals must be made in strict accordance with the Project Budget. Grantee agrees to refund to the City any payments that MOHCD determines were not properly due to Grantee under this Agreement, immediately upon receipt of notice from MOHCD of such determination. Any amendment to the Project Budget must be made in accordance with Section 19.02.

ARTICLE 6 RESTRICTIONS ON THE USE OF THE FUNDS

Section 6.01 – Restrictions on Disbursements

Grantee shall use the Grant Amount only to make a loan to the Investment Fund, and shall ensure that the QALICB uses the Grant Funds received indirectly by the QALICB via the NMTC Financing Structure for costs specifically included in the Work Program or Project Budget, or otherwise approved by MOHCD in writing. Without limiting the foregoing, under no circumstances shall the Grant Amount be used for any of the following:

- A. Costs that violate the terms of this Agreement or exceed the total Project Budget in Appendix A.
- B. Payments to any contractor, consultant, lessor or other third party without benefit of a written contract previously approved in writing by MOHCD pursuant to Section 7.03, or not in compliance with MOHCD requirements relating to consultant and fiscal matters.
- C. Costs relating to the acquisition, construction, reconstruction, rehabilitation, repair, maintenance or operation of religious structures used for religious purposes.
- D. Political activities, as more particularly set forth in Section 18.10 below.

Section 6.02 – Contract Close Out

Grantee acknowledges and agrees that the Grant Amount shall be used solely to make a loan to the Investment Fund, and Grantee shall ensure that the QALICB uses the Grant Funds received indirectly by the QALICB via the NMTC Financing Structure for eligible costs consistent with the Work Program during the term and that, upon expiration of the term, or upon earlier termination of this Agreement, Grantee shall have no interest in any portion of the Grant Amount.

**ARTICLE 7
ASSIGNMENT AND CONTRACTING**

Section 7.01 – No Assignment by Grantee

Grantee shall not, either directly or indirectly, assign, transfer, hypothecate, subcontract or delegate all or any portion of this Agreement or any rights, duties or obligations of Grantee hereunder without the prior written consent of City. This Agreement shall not, nor shall any interest herein, be assignable as to the interest of Grantee involuntarily or by operation of law without the prior written consent of City. A change of ownership or control of Grantee or a sale or transfer of substantially all of the assets of Grantee shall be deemed an assignment for purposes of this Agreement.

Section 7.02 – Agreement Made in Violation of this Article

Any agreement made in violation of Section 7.01 shall confer no rights on any person or entity and shall automatically be null and void.

Section 7.03 – Subcontracting

A. Grantee, when necessary to complete the Work Program, may subcontract parts of the Work Program to contractors acceptable to MOHCD, subject to the provisions of this Section.

B. Prior to entering into any contract for contractor or consultant services for Ten Thousand Dollars (\$10,000.00) or more, Grantee must submit the proposed contract to MOHCD for approval, together with information concerning the qualifications and licensing of the proposed contractor or consultant and any additional information requested by MOHCD. All proposed contracts must detail the responsibilities, standards and compensation of the contractor or consultant. Reasons for disapproval of such contract may include, but are not limited to, a scope of work or budget that does not reflect the Project Budget or Work Program, or insufficient qualifications of the contractor or consultant.

C. No funds will be disbursed by City for the services of a contractor or consultant unless pursuant to a written contract. All contracts for Ten Thousand Dollars (\$10,000.00) or more must be approved in writing by MOHCD in advance and shall be made in conformance with the requirements and procedures set forth in MOHCD Form H: Request for Approval of Subcontract and Equipment Purchases (“Form H”). Without limiting the foregoing, all contracts and subcontracts entered into by Grantee must include the applicable provisions of this Agreement relative to the Funding Source.

D. In the event that Grantee contracts parts of the Work Program to contractors acceptable to MOHCD, Grantee shall not thereby be relieved from any liability or obligation under this Agreement and, as between City and Grantee, Grantee shall be responsible for the acts, defaults and omissions of any contractor or its agents or employees as fully as if they were the acts, defaults or omissions of Grantee. Grantee shall ensure that its contractors comply with all of the terms of this Agreement, insofar as they apply to the contracted portion of the Work Program. All references herein to duties and obligations of Grantee shall be deemed to pertain also to all contractors to the extent applicable. A default by any contractor shall be deemed to be an Event of Default hereunder. Nothing contained in this Agreement shall create any contractual relationship between any contractor and City.

E. Each subcontract shall be in form and substance acceptable to City and shall expressly provide that it may be assigned to City without the prior consent of the subcontractor. In addition, each subcontract shall incorporate all of the terms of this Agreement, insofar as they apply to the subcontracted portion of the Work Program. Without limiting the scope of the foregoing, each subcontract shall provide City, with respect to the subcontractor, the audit and inspection rights set forth in Section 6.6. Upon the request of City, Grantee shall promptly furnish to City true and correct copies of each subcontract permitted hereunder.

Section 7.04 – Grantee Retains Responsibility

Grantee shall in all events remain liable for the performance by any assignee or subgrantee of all of the covenants, terms and conditions contained in this Agreement.

Notwithstanding the foregoing, the QALICB is not considered a subcontractor under Article 7.

**ARTICLE 8
ACQUISITION OF REAL AND PERSONAL PROPERTY**

Section 8.01 – Purchase Procedures

A. Any purchase of property or services under this Agreement must be consistent with applicable federal, state and local laws.

Section 8.02 – Equipment and Supplies

No Grant Funds under this Agreement will be disbursed by City for the purchase of equipment or supplies in an amount of \$3,000.00 or more, unless pursuant to a written contract previously approved by MOHCD in writing and made in conformance with the purchase procedures set forth in Form H. Grantee shall not circumvent this requirement for written consent by dividing an order or payment into two or more parts.

Section 8.03 – Acquisition and Disposition of Nonexpendable Property

A. Title to all nonexpendable property (nonexpendable property is property other than real property that costs more than \$500.00 and has a useful life which exceeds one year) acquired by Grantee in whole or in part with funds provided under this Agreement, shall vest immediately in City for the purpose of securing Grantee's performance under this Agreement, unless City notifies Grantee to the contrary. Grantee shall take any and all steps necessary to take title to such property in City's name. Grantee shall have the right to possession of such property and shall be solely responsible for the use and maintenance of such property and for any liability associated with the property that arises or relates to any act or omission occurring at any point prior to Grantee's delivery of the property to City. Grantee may not alienate, transfer or encumber such property without City's prior written consent. At the end of the term or upon earlier expiration of this Agreement, possession of said property should be immediately surrendered to City.

B. Following the term or earlier expiration of this Agreement, City may release the nonexpendable property to Grantee, reallocate it to Grantee under subsequent Agreements, or allocate it to other beneficial public agencies or private nonprofit grantees.

Section 8.04 – Ownership of Results

Any interest of Grantee or any subcontractor in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, the contents of computer files or media, or other documents or Publications prepared by Grantee or any subcontractor in connection with this Agreement, the implementation of the Work Program, the services to be performed under this Agreement, or acquired through the use of any Grant Funds ("Work Product"), is hereby pledged to City as security for Grantee's obligations and performance under this Agreement, and upon an Event of Default, shall become the property of and be promptly transmitted by Grantee to City. Upon the written request of City, Grantee shall transmit or deliver to City any Work Product at the end of the term or upon earlier expiration of this Agreement.

Section 8.05 – Acquisition and Disposition of Real Property

The following conditions apply to any acquisition by Grantee of an interest in real property (the "Acquired Property") in whole or in part with the Grant Amount:

A. Grantee must obtain prior written approval from MOHCD for any such acquisition.

B. Grantee shall be solely responsible for the condition, use and operation of the Acquired Property and for any liability with respect thereto during the period of Grantee's ownership of a leasehold interest in the Acquired Property under the Master Lease and during such period, Grantee will maintain the Acquired Property in good condition and repair and use it to provide services as specified in the Work Program.

C. No portion of Grantee's interest in the Acquired Property or the improvements constructed thereon may be voluntarily transferred by Grantee during the period of Grantee's ownership of a leasehold interest in the Acquired Property without the prior written approval of MOHCD. "Transfer" includes any transfer or encumbrance of any of

Grantee's interest in such property, and any transfer or encumbrance of any ownership interest in Grantee. If necessary, Grantee must also obtain prior written approval from the Funding Source of such transfer.

D. Six (6) months following the date of acquisition and annually thereafter during the period of Grantee's ownership of a leasehold interest in the Acquired Property, Grantee shall file with MOHCD written reports on the operation and maintenance of the Acquired Property and shall furnish, upon request, such other pertinent data evidencing continuous use of the Acquired Property for the purposes specified in this Agreement.

E. During the period of Grantee's ownership of a leasehold interest in the Acquired Property, prior to Grantee quitting, vacating, transferring, selling, or surrendering the real property, or electing or becoming unable to continue the use of said property as specified in the Work Program, Grantee must notify MOHCD. MOHCD will determine whether a proposed new use meets the City priority, which the Grantee initially agreed to as a condition for receiving such City funding. If the real property's new use does not meet a City priority, then Grantee shall immediately pay to MOHCD the Grant Amount.

Section 8.06 – Property Improved, Renovated or Rehabilitated with the Funds

This Section does not apply if Grantee is acting as an intermediary in administering a rehabilitation, renovation or improvement program or Grantee is not undertaking any such rehabilitation, renovation or improvement program itself.

A. No real property may be improved, renovated or rehabilitated in whole or in part with the Grant Amount unless Grantee either owns a fee interest in the real property or holds a leasehold interest in the real property.

B. In the event Grantee or QALICB owns a fee interest in real property and undertakes Improvements to such real property, then Grantee must, at the time of entering into this Grant Agreement, ensure that QALICB executes and records the Declaration of Restrictions naming City as beneficiary, which Declaration of Restrictions shall prescribe certain property use and reporting obligations that shall run with the land during the term of the Ground Lease. The Declaration of Restrictions shall be in a form and content approved by MOHCD. In the event of a default under the Declaration of Restrictions, City would have all rights and remedies available by law or in equity, including but not limited to an action for specific performance.

C. During the period of Grantee's ownership of a leasehold interest in the Acquired Property, prior to Grantee quitting, vacating, transferring, selling, or surrendering its interest in the Acquired Property, or electing or becoming unable to continue the use of such Acquired Property as specified in the Declaration of Restrictions, Grantee shall provide written notice to MOHCD. MOHCD will determine whether a proposed new use meets the City priority, which the Grantee initially agreed to as a condition for receiving the Grant Amount. If the Acquired Property's new use does not meet a City priority, then Grantee shall immediately pay to MOHCD the Grant Amount.

D. Grantee shall not undertake any physical improvements to Grantee's and QALICB's real property using the Grant Amount under this Agreement until it has received all necessary approvals in connection with any applicable state and/or federal environmental review process.

Section 8.07 – Acquisition and Disposition of Leasehold Interests in Real Property

The following conditions apply to any acquisition of a leasehold interest in real property in whole or in part with the Grant Amount:

A. Grantee must submit the proposed lease to MOHCD for review and approval prior to execution. Whenever the Grant Funds are used in whole or in part for the acquisition of a leasehold interest in real property, MOHCD may require the inclusion of certain language to achieve the purpose of this Agreement and/or the MOHCD Program.

B. Grantee and QALICB must execute and record a Declaration of Restrictions on QALICB's leasehold interest and Grantee's subleasehold interest naming City as beneficiary.

Notwithstanding the foregoing, the QALICB is not considered a subcontractor under Article 8.

Section 8.08 – Future Grant of Option.

If at any time the property on which the Project is developed is no longer encumbered by any deed of trust or other instrument securing financing and if the loans to the QALICB in the NMTC Financing Structure have been discharged or paid in full, then Grantee shall, through its representation on QALICB's board of directors, cause QALICB to grant to the City an option to acquire QALICB's leasehold interest in such property for the remaining term of the Ground Lease if the QALICB receives a notice of an event of default by QALICB under the Ground Lease. Such option shall provide that if the City elects to exercise such option, then it shall deliver a written notice to the QALICB and the Housing Authority of the City and County of San Francisco ("Lessor") within thirty (30) days after such an event of default (the "Option Notice"), notifying the QALICB and Lessor of the City's exercise of such option, and the City shall thereafter acquire the QALICB's leasehold interest within sixty (60) days after providing the Option Notice. QALICB and Lessor shall execute all documents necessary to effectuate such option and assignment of leasehold interest, including Lessor entering in an amended or new lease with the City for the remainder of the unexpired term of the Ground Lease. The Lessor has executed this Agreement for the purpose of acknowledging and consenting to the rights of the City set forth in this Section 8.08 and agreeing to provide copies of event of default notices to the City.

ARTICLE 9 REPORTING REQUIREMENTS; AUDITS; PENALTIES FOR FALSE CLAIMS

Section 9.01 – Monitoring and Reporting

A. Grantee agrees that MOHCD may monitor the progress of the activities performed by Grantee pursuant to this Agreement, and Grantee agrees to comply, or cause the QALICB to comply, with monthly reporting requirements imposed by MOHCD to meet performance standards required herein.

B. The goal of MOHCD's monitoring shall be to determine the following: actual versus planned achievement of Work Program objectives; Work Program performance, effectiveness, efficiency and workload. Monitoring by the City under this Agreement may include, but shall not be limited to: (i) on-site inspections by the City staff or the City's agents; (ii) quarterly performance reviews; (iii) interviews with Grantee's staff members and/or clients of Grantee in the performance of the Work Program; (iv) attendance at events, activities or meetings; and (v) a monthly evaluation report from the Grantee to be included with their HOPE SF monthly report. Grantee agrees to comply with all of the City's monitoring requests, and to gather information regarding the work funded hereunder as and when requested by the City. Failure to comply with the City's monitoring requests shall be deemed a material breach of this Agreement and shall entitle the City to exercise any and all rights and remedies available hereunder, including but not limited to the right to terminate this Agreement.

C. City shall, upon request of the Authority, provide information received under this Section 9.01 to the Authority for the Authority's review. Such information may include, but not be limited to, the reports and documents listed in Section 9.01(B).

Section 9.02 – Organizational Documents

If requested by City, on or before the date of this Agreement, Grantee shall provide to City the names of its current officers and directors and certified copies of its Articles of Incorporation and Bylaws as well as satisfactory evidence of the valid nonprofit status described in Section 11.01.

Section 9.03 – Notification of Defaults or Changes in Circumstances

Grantee shall notify City immediately of (a) any Event of Default or event that, with the passage of time, would constitute an Event of Default; and (b) any change of circumstances that would cause any of the representations and warranties contained in Article 11 to be false or misleading at any time during the term of this Agreement.

Section 9.04 – Financial Statements

Pursuant to San Francisco Administrative Code Section 67.32, Grantee has on or before the date hereof provided to the City financial projections, including profit and loss figures, for the Work Program. For the term of the Agreement, Grantee shall within 30 days after the end of Grantee's fiscal year provide to the City annual financial

statements for the Work Program certified by Grantee as complete and accurate and audited by an independent accounting firm. Grantee acknowledges and agrees that the financial projections and audited financial statements shall be public records subject to disclosure upon request.

Section 9.05 – Books and Records

During the term, and for a period of five (5) years after expiration of the term, Grantee shall create and maintain records that include, but are not limited to, the following information: (i) the specific uses of the Grant Amount and of any other monies used to fund the performance of the Work Program, including records demonstrating that each activity is eligible for reimbursement hereunder; (ii) copies of all invoices, canceled checks, payroll records, attendance records, and any other documentation for costs which have been reimbursed by the Grant Amount, including withholding, social security payments, and other employee/contractor-related payments; (iii) documentation relating to Grantee's tax-exempt status; (iv) Grantee's tax returns and financial statements applicable the term; and (v) financial information as required by the Funding Source, including 24 C.F.R. Part 570.502 for CDBG grants, 24 C.F.R. Part 576.500 for ESG grants and 24 C.F.R. Part 574.530 for HOPWA grants. Without limiting the scope of the foregoing, Grantee shall establish and maintain accurate financial books and accounting records relating to permitted expenses incurred and Grant Amount received and expended under this Agreement. All records shall be maintained in a manner that, in MOHCD's reasonable judgment, will provide an effective system of internal control and will permit timely and effective audits as required by this Agreement, and for federal Funding Sources, all such records shall also be maintained in accordance with OMB Uniform Guidance requirements in 2 C.F.R. Part 200. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the five-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five-year period, whichever is later.

Section 9.06 – Inspection and Audit

Grantee shall make available to City, its employees and authorized representatives, during regular business hours all of the files, records, books, invoices, documents, payrolls and other data required to be established and maintained by Grantee under Section 9.05. Grantee shall permit City, its employees and authorized representatives to inspect, audit, examine and make excerpts and transcripts from any of the foregoing. The rights of City pursuant to this Section shall remain in effect so long as Grantee has the obligation to maintain such files, records, books, invoices, documents, payrolls and other data under this Article 9.

Section 9.07 – Submitting False Claims

Grantee shall at all times deal in good faith with the City, shall only submit a Funding Request to the City upon a good faith and honest determination that the funds sought are for eligible expenses under the Grant, and shall only use Grant Funds for payment of eligible expenses as set forth in the Project Budget. Any Grantee who commits any of the following false acts shall be liable to the City for three times the amount of damages the City sustains because of the Grantee's act. A Grantee will be deemed to have submitted a false claim to the City if the Grantee: (a) knowingly presents or causes to be presented to an officer or employee of the City a false Funding Request; (b) knowingly disburses Grants Funds for expenses that are not eligible expenses; (c) knowingly makes, uses, or causes to be made or used a false record or statement to get a false Funding Request paid or approved by the City; (d) conspires to defraud the City by getting a false Funding Request allowed or paid by the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim..

ARTICLE 10 TAXES

Section 10.01 – Grantee to Pay All Taxes

Grantee shall pay to the appropriate governmental authority, as and when due, any and all taxes, fees, assessments or other governmental charges, including possessory interest taxes and California sales and use taxes, levied upon or in connection with this Agreement, the Work Program, the Grant Funds or any of the activities contemplated by this Agreement.

Section 10.02 – Use of City Real Property

If at any time this Agreement entitles Grantee to the possession, occupancy or use of City real property for private gain, the following provisions shall apply:

- (a) Grantee, on behalf of itself and any subgrantees, successors and assigns, recognizes and understands that this Agreement may create a possessory interest subject to property taxation and Grantee, and any subgrantee, successor or assign, may be subject to the payment of such taxes.
- (b) Grantee, on behalf of itself and any subgrantees, successors and assigns, further recognizes and understands that any assignment permitted hereunder and any exercise of any option to renew or other extension of this Agreement may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Grantee shall report any assignment or other transfer of any interest in this Agreement or any renewal or extension thereof to the County Assessor within sixty (60) days after such assignment, transfer, renewal or extension.
- (c) Grantee shall provide such other information as may be requested by City to enable City to comply with any reporting requirements under applicable law with respect to possessory interests.

Section 10.03 – Withholding

Grantee agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Grantee further acknowledges and agrees that City may withhold any payments due to Grantee under this Agreement if Grantee is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Grantee, without interest, upon Grantee coming back into compliance with its obligations.

ARTICLE 11 REPRESENTATIONS AND WARRANTIES

Grantee represents and warrants each of the following as of the date of this Agreement and at all times throughout the term of this Agreement:

Section 11.01 – Organization; Authorization

Grantee is a nonprofit grantee, duly organized and validly existing and in good standing under the laws of the jurisdiction in which it was formed. Grantee has established and maintains valid nonprofit status under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and all rules and regulations promulgated under such section. Grantee has duly authorized by all necessary action the execution, delivery and performance of this Agreement. Grantee has duly executed and delivered this Agreement and this Agreement constitutes a legal, valid and binding obligation of Grantee, enforceable against Grantee in accordance with the terms hereof.

Section 11.02 - Location

Grantee's operations, offices and headquarters are located at the address for notices set forth Section 17.01. All aspects of the Work Program will be implemented at the geographic location(s), if any, specified in the Work Program.

Section 11.03 – No Misstatements

No document furnished or to be furnished by Grantee to City in connection with this Agreement, any funding request or any other document relating to any of the foregoing, contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

Section 11.04 – Conflict of Interest

A. Through execution of this Agreement, Grantee acknowledges that it is familiar with the provisions of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provision and agrees that it will immediately notify City if it becomes aware of any such fact during the term of this Agreement.

1. Incorporation of the California Political Reform Act – No officer or employee of the City and County shall make, participate in making, or seek to influence a decision of the City and County in which the officer or employee has a financial interest within the meaning of California Government Code Section 87100 et seq. and any subsequent amendments to these Sections.

2. Incorporation of California Government Code 1090, et seq. – No officer or employee of the City and County shall make a contract in which he or she has a financial interest within the meaning of California Government Code Section 1090 et seq. and any subsequent amendments to these Sections.

3. Future Employment – No officer or employee of the City shall make, participate in making, or otherwise seek to influence a governmental decision, affecting a person or entity with whom the officer or employee is discussing or negotiating an agreement concerning future employment.

B. Not more than one member of an immediate family serves or will serve as an officer, director or employee of Grantee, without prior written consent of City. For purposes of this subsection, "immediate family" shall include husband, wife, domestic partner, brothers, sisters, children and parents (both legal parents and stepparents). If Grantee has any doubt as to its compliance with this requirement, it shall submit a written request to MOHCD for clarification and advice as to the proper course of action to be taken. Where noncompliance is found, MOHCD shall have the right, upon discovering such noncompliance, to order Grantee to dismiss one or as many of its employees as are required to restore compliance with this requirement.

C. No member of the board of directors, governing officer or employee of Grantee who exercises any functions or responsibilities in connection with the planning or carrying out of the MOHCD Program during his/her tenure or for one year thereafter, shall have any personal financial interest, direct or indirect, in any contract or subcontract, or the proceeds thereof for work to be performed in connection with the programs assisted under this Agreement. The prohibition contained in this Section shall prevent, among other things, any officer or board member or employee, during his/her tenure and for one year thereafter, from assuming a position, within or outside Grantee, funded directly or indirectly with MOHCD funds. Furthermore, no individual employee of Grantee, including the executive director, shall be a member of the Board of Directors of Grantee during his or her employment and for one year thereafter; provided, nothing herein shall prevent any employee from attending Board of Directors meetings. Grantee shall take appropriate steps to assure compliance with this Section. Grantee agrees that it shall incorporate into every contract required to be in writing the following provision:

"Interest of Contractor and Employees – The Contractor covenants that no person, including but not limited to, an officer or board member or employee of Grantee, who presently exercises any functions or responsibilities in connection with the MOHCD Program, shall have any personal financial interest, direct or indirect, in this Contract or current City/Grantee Agreement. The Contractor further covenants that he/she presently has no interest and shall not acquire any interest, direct or indirect, in the immediate neighborhood or any parcels therein, which would affect or conflict in any manner or degree with the performance of his/her services hereunder. The Contractor further covenants that, in the performance of this contract, no person having any conflicting interest shall be employed. It shall be the responsibility of the Contractor to make all reasonable and lawful efforts and inquiries in determining if any employee or prospective employee has any conflicting interest. Any interest or possible interest of the Contractor or his/her employees must be disclosed to Grantee and to the Mayor's Office of Housing and Community Development/Office of Economic and Workforce Development."

Provided, however, that this paragraph shall be interpreted in such a manner so as not to unreasonably impede the statutory requirement that maximum opportunity be provided for employment of or participation by residents of the area.

D. By executing this Agreement, Grantee represents that it has distributed a copy of the above conflict of interest provisions to each of Grantee's board members and employees, and agrees to distribute such provisions to

each new board member and employee during the term, and Grantee has or will instruct each such board member or employee to verify the absence of any actual or potential conflict.

Section 11.05 – Grantee’s Board of Directors

Grantee shall at all times be governed by a legally constituted and fiscally responsible board of directors. Membership on Grantee’s board of directors should have an adequate representation of different neighborhood and interest groups in the immediate neighborhood, particularly low and moderate-income persons for which services are being provided. Such board of directors shall meet regularly and maintain appropriate membership, as established in Grantee's bylaws and other governing documents and shall adhere to applicable provisions of federal, state and local laws governing nonprofit corporations. A list of the current members of Grantee’s board of directors and officers has been provided to City, and, in the event of any changes, Grantee shall promptly provide to City any update to such list of current directors and officers. Grantee's board of directors shall exercise such oversight responsibility with regard to this Agreement as is necessary to ensure full and prompt performance by Grantee of its obligations under this Agreement.

Section 11.06 – No Other Agreements with City

Except as expressly itemized in Appendix B, neither Grantee nor any of Grantee's affiliates, officers, directors or employees has any interest, however remote, in any other agreement with City including any commission, department or other subdivision thereof.

Section 11.07 – Subcontracts

Except as may be permitted hereunder and approved by MOHCD, Grantee has not entered into any agreement, arrangement or understanding with any other person or entity pursuant to which such person or entity will implement or assist in implementing all or any portion of the Work Program.

Section 11.08 – Eligibility to Receive Federal Funds

By executing this Agreement, Grantee certifies that Grantee is not suspended, debarred or otherwise excluded from participation in federal assistance programs. Grantee acknowledges that this certification of eligibility to receive federal funds is a material term of the Agreement.

ARTICLE 12 INDEMNIFICATION AND GENERAL LIABILITY

Section 12.01 – Indemnification

Grantee shall indemnify, protect, defend and hold harmless each of the Indemnified Parties from and against any and all Losses arising from, in connection with or caused by: (a) a material breach of this Agreement by Grantee; (b) a material breach of any representation or warranty of Grantee contained in this Agreement; (c) any personal injury caused, directly or indirectly, by any act or omission of Grantee or its employees, subgrantees or agents; (d) any property damage caused, directly or indirectly by any act or omission of Grantee or its employees, subgrantees or agents; (e) the use, misuse or failure of any equipment or facility used by Grantee, or by any of its employees, subgrantees or agents, regardless of whether such equipment or facility is furnished, rented or loaned to Grantee by an Indemnified Party; (f) any tax, fee, assessment or other charge for which Grantee is responsible under Article 10; or (g) any infringement of patent rights, copyright, trade secret or any other proprietary right or trademark of any person or entity in consequence of the use by any Indemnified Party of any goods or services furnished to such Indemnified Party in connection with this Agreement. Grantee's obligations under the immediately preceding sentence shall apply to any Loss that is caused in whole or in part by the active or passive negligence of any Indemnified Party, but shall exclude any Loss caused solely by the willful misconduct of the Indemnified Party. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City’s costs of investigating any claims against the City.

As a material part of the consideration for this Agreement, Grantee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, the City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any present or future laws, statutes, or regulations, arising out of any acts, omissions, or

matters relating to this Agreement, including but not limited to any exercise of the City of its right to suspend or terminate this Agreement. In connection with the foregoing release, Grantee acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Grantee acknowledges that the release contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Grantee realizes and acknowledges that it has entered into this Agreement in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases and indemnifications contained herein shall survive any termination of this Agreement.

Section 12.02 – Duty to Defend; Notice of Loss

Grantee acknowledges and agrees that its obligation to defend the Indemnified Parties under Section 12.01: (a) is an immediate obligation, independent of its other obligations hereunder; (b) applies to any Loss which actually or potentially falls within the scope of Section 12.01, regardless of whether the allegations asserted in connection with such Loss are or may be groundless, false or fraudulent; and (c) arises at the time the Loss is tendered to Grantee by the Indemnified Party and continues at all times thereafter. The Indemnified Party shall give Grantee prompt notice of any Loss under Section 12.01 and Grantee shall have the right to defend, settle and compromise any such Loss; provided, however, that the Indemnified Party shall have the right to retain its own counsel at the expense of Grantee if representation of such Indemnified Party by the counsel retained by Grantee would be inappropriate due to conflicts of interest between such Indemnified Party and Grantee. An Indemnified Party's failure to notify Grantee promptly of any Loss shall not relieve Grantee of any liability to such Indemnified Party pursuant to Section 12.01, unless such failure materially impairs Grantee's ability to defend such Loss. Grantee shall seek the Indemnified Party's prior written consent to settle or compromise any Loss if Grantee contends that such Indemnified Party shares in liability with respect thereto.

Section 12.03 – Incidental and Consequential Damages

Losses covered under this Article 12 shall include any and all incidental and consequential damages resulting in whole or in part from Grantee's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that any Indemnified Party may have under applicable law with respect to such damages.

Section 12.04 – Limitation on Liability of City

CITY'S OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AGGREGATE AMOUNT OF GRANT FUNDS ACTUALLY DISBURSED HEREUNDER. NOTWITHSTANDING ANY OTHER PROVISION CONTAINED IN THIS AGREEMENT, THE APPLICATION DOCUMENTS OR ANY OTHER DOCUMENT OR COMMUNICATION RELATING TO THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE GRANT FUNDS, THE WORK PROGRAM OR ANY ACTIVITIES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

ARTICLE 13 INSURANCE AND BONDING

Section 13.01 – Types and Amounts of Coverage

Without limiting Grantee's liability pursuant to Article 12, Grantee shall cause QALICB during the full term of this Agreement, insurance in the following amounts and coverages:

A. Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than one million dollars (\$1,000,000) each accident, injury, or illness. If Grantee is expected to perform services on City premises the

Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Grantee, its employees, agents and subcontractors.

B. Commercial General Liability Insurance with limits not less than one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations, and if the Grantee will provide services for vulnerable clients, such as minors or the elderly, such policy must include Abuse and Molestation coverage.

C. Commercial Automobile Liability Insurance with limits not less than one million dollars (\$1,000,000) each occurrence, Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

D. Professional Liability Insurance for negligent acts, errors or omission with respect to professional or technical services, if any, required in the performance of this Agreement with limits not less than one million dollars (\$1,000,000) each claim.

E. Property Insurance covering all real property constructed in form appropriate for the nature of such property, covering all risks of loss, excluding earthquake and flood, for 100% of the reconstruction value (brought up to current codes), with deductible, if any, acceptable to the City.

Section 13.02 – Additional Requirements for General and Automobile Coverage

Commercial General Liability and Commercial Automobile Liability insurance policies shall:

A. Name as additional insured City and its officers, agents and employees.

B. Provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to limits of liability.

Section 13.03 – Additional Requirements for All Policies

All insurance policies required to be maintained by Grantee shall be endorsed to provide thirty (30) days' prior written notice of cancellation for any reason, reduction in coverage, or intended nonrenewal to Grantee and City. Notice to City shall be mailed to the address(es) for City pursuant to Article 17. Grantee's compliance with the insurance requirements hereunder shall in no way reduce, affect or relieve Grantee's indemnification and other obligations hereunder.

In the event Grantee engages in activities not covered by the above insurance, Grantee shall procure whatever additional insurance necessary or appropriate to cover such risks. Acquisition of such insurance does not, however, assure the City's approval of such new activities.

Section 13.04 – Required Post-Expiration Coverage

Should any of the insurance required hereunder be provided under a claims-made form, Grantee shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three (3) years beyond the expiration or termination of this Agreement, to the effect that, should occurrences during the term hereof give rise to claims made after expiration or termination of the Agreement, such claims shall be covered by such claims-made policies.

Section 13.05 – General Annual Aggregate Limit/Inclusion of Claims Investigation or Legal Defense Costs

Should any of the insurance required hereunder be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

Section 13.06 – Evidence of Insurance

Before commencing any operations under this Agreement, Grantee shall furnish to City certificates of insurance and additional insured policy endorsements in form and with insurers acceptable to the City, evidencing all coverages set forth above, and shall furnish complete copies of policies promptly upon City's request. Before commencing any operations under this Agreement, Grantee shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

Section 13.07 – Effect of Approval

Approval of any insurance by City shall not relieve or decrease the liability of Grantee hereunder.

Section 13.08 – Insurance for Subcontractors and Evidence of this Insurance

If a subcontractor will be used to complete any portion of this Agreement, Grantee shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents, and employees and Grantee as additional insureds.

Section 13.09 – Bonding for Construction Contracts

Prior to the release of any of the Grant Funds for the construction or improvement of facilities, QALICB must enter into a contract with a contractor wherein QALICB shall explicitly retain an amount equal to or greater than 10% of the total construction cost until completion of the entire contract, and each progress payment during construction shall retain the required percentage of the cost of the work covered by that payment. The final payment to the contractor shall be made only upon recordation of a valid notice of completion, receipt of an architect's certification of substantial completion, receipt of appropriate lien waivers or releases.

Section 13.10 – Construction Contractor's Insurance

A. QALICB must require that the construction contractor maintain, throughout the term of the construction contract, insurance as follows:

1. Workers' Compensation Insurance at statutory limits, including coverage for Employers' Liability, with limits not less than one million dollars (\$1,000,000) each accident, injury, or illness. If Grantee is expected to perform services on City premises the Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Grantee, its employees, agents and subcontractors; and
2. Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
3. Commercial Automobile Liability Insurance with limits not less than one million dollars (\$1,000,000) each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable; and
4. Builder's All Risk Insurance for loss or damage to the work in progress for the amount of the contract.

B. Each contractor shall furnish QALICB with certificates of insurance and additional insured policy endorsements from insurers in a form acceptable to the City for the above coverage prior to the commencement of any work, and QALICB shall verify that the above insurance requirements are maintained throughout the term of the construction contract and during all construction. Upon request, QALICB shall furnish copies of such certificates of insurance and endorsements to the City.

Section 13.11 – Professional Liability Insurance for Construction Contracts

A. Grantee shall require, throughout the term of any contract for professional services, or, if professional services are donated, throughout the term of the construction contract to which said professional services are devoted, that such professional services contractor maintain insurance as follows:

Professional liability insurance for negligent acts, errors or omission with respect to professional or technical services, if any, required in the performance of this Agreement with limits not less than one million dollars (\$1,000,000) each claim

B. Grantee shall verify that such insurance is maintained as set forth above, and upon request, shall furnish to the City a copy of the certificate of insurance. In the event that such insurance is not maintained, Grantee shall terminate the applicable contract until such time as the required insurance is obtained or shall retain the services of some other professional service contractor that has or will obtain the requisite insurance.

ARTICLE 14 EVENTS OF DEFAULT AND REMEDIES

Section 14.01 – Events of Default

The occurrence of any one or more of the following events shall constitute an “Event of Default” under this Agreement:

A. False Statement – Any statement, representation or warranty contained in this Agreement, in the Application Documents or in any other document submitted to City under this Agreement is found by City to be false or misleading.

B. Failure to Provide Insurance – Grantee fails to provide or maintain in effect any policy of insurance required in Article 13.

C. Failure to Comply with Applicable Laws – Grantee fails to perform or breaches any of the terms or provisions of Article 18.

D. Failure to Perform Other Covenants – Grantee fails to perform or breaches any other agreement or covenant of this Agreement to be performed or observed by Grantee as and when performance or observance is due and such failure or breach continues for a period of ten (10) days after the date on which such performance or observance is due.

E. Cross Default – Grantee defaults under any other agreement between Grantee and City (after expiration of any grace period expressly stated in such agreement), including but not limited to a HOPWA Loan.

F. Voluntary Insolvency – Grantee (i) is generally not paying its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Grantee or of any substantial part of Grantee's property or (v) takes action for the purpose of any of the foregoing.

G. Involuntary Insolvency – Without consent by Grantee, a court or government authority enters an order, and such order is not vacated within ten (10) days, (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Grantee or with respect to any substantial part of Grantee's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of Grantee.

H. Failure to Comply with Reporting Requirements – Grantee fails to comply with the reporting requirements required herein or the submission to the City of reports which are incorrect, incomplete and/or misleading in any

material respect, or fails to keep accurate records as required under this Agreement, as determined by MOHCD in its sole discretion.

I. Failure to Implement and Maintain Fiscal Control Requirements – Grantee shall take all necessary steps to ensure proper fiscal control over the Grant Funds and to ensure that the Grant Funds are properly used in furtherance of the Work Program and for no other purposes. Without limiting the foregoing, Grantee shall require not less than two authorized signatures from officers and/or board members of Grantee, (i) on each funding request, and (ii) before making any payment in excess of \$5,000 using the Grant Funds or where Grantee intends to request reimbursement with the Grant Funds. MOHCD shall have the right to review and suggest improvements to Grantee's fiscal control mechanisms or procedures, and Grantee's inability to provide proper fiscal control or Grantee's refusal or inability to accept and implement additional fiscal controls mandated by MOHCD, the City, or the Funding Source shall be a material breach of this Agreement. MOHCD may suspend or terminate payments to Grantee hereunder pursuant to this Article 14 upon MOHCD's determination of mismanagement by Grantee.

J. Impracticality or Unfeasibility of Carrying out the Agreement – Grantee does not demonstrate capacity to implement this Agreement.

K. Failure to Accept Additional Conditions – Grantee is unable or unwilling to accept any additional conditions that may be provided by law, by executive order, by regulations, or by any policy announced by the Funding Source or MOHCD at any time.

L. Failure to Fulfill Work Program Goals – Grantee fails to fulfill the goals and requirements set forth in the Work Program, or to cooperate with MOHCD's monitoring requirements, or to use the Grant Funds as required under this Agreement, or any other unsatisfactory performance of this Agreement as determined by MOHCD in its sole discretion.

M. Failure to Maintain Licenses or Governmental Approvals – Grantee loses or fails to maintain any license(s) or governmental approval(s) required for the lawful operation or performance of all or part of the activities funded by this Agreement.

N. Suspension or Debarment by Governmental Agency – Grantee is suspended, disciplined or debarred by the U.S. General Services Administration or any other governmental agency.

O. Conflict of Interest – Grantee breaches or violates the conflict of interest provisions set forth herein.

Grantee shall notify MOHCD immediately upon the occurrence of any activity, notice or event that falls within the items listed above, with the reasons therefore together with any relevant facts or information requested by MOHCD.

Section 14.02 – Remedies Upon Event of Default

Upon and during the continuance of an Event of Default, City may do any of the following, individually or in combination with any other remedy:

A. Suspension and Probation – City may immediately suspend this Agreement or put this Agreement on probation at any time for any of the above reasons, with or without notice to Grantee and without any liability therefore. In the event the City puts this Agreement on probation, the City shall continue to make disbursements under this Agreement for a period of up to six (6) months for Grantee to rectify performance deficiencies or violations to the satisfaction of the City. Following and/or during this probation, the City may elect to suspend or terminate this Agreement as provided below. In the event the City suspends this Agreement, the City shall not be obligated to make any further disbursements under this Agreement unless and until the City decides to reinstate this Agreement and any prior violation has been remedied to the satisfaction of the City. Any Grant Funds withheld pursuant to this Section and subsequently disbursed to Grantee after cure of applicable Events of Default shall be disbursed without interest. Following such suspension, the City may elect to terminate this Agreement as provided below.

B. Termination – City may terminate this Agreement by notifying Grantee in writing of the City's intent to terminate the Agreement, specify the reasons(s), and furnish a description of corrective actions (if any) to be taken by Grantee. Grantee shall have five (5) working days in which to respond to such a letter of intent. If Grantee does not reply to the letter of intent or effectuate the requested corrective measures to the satisfaction of the City within such five- (5) working day period, the City may terminate the Agreement, in its sole discretion and without liability

therefore, by giving written notice to Grantee of such termination. Any termination shall be effective as of the date of such notice. Grantee will be paid for eligible expenses that was submitted and approved by City prior to the date of termination specified in such notice. The City need not give such letter of intent if the termination is for a performance problem or other matter not reasonably susceptible to a cure within such five (5) day period. Upon termination of this Agreement, Grantee shall, without limiting any of the City's rights or remedies, immediately refund to the City all unexpended and improperly expended funds disbursed to Grantee under this Agreement, and any assets and any interests of any type and in any form acquired, leased, or rehabilitated with MOHCD monies. Grantee shall execute any documents or instruments reasonably requested by the City to effectuate such transfer.

C. Withholding of Grant Funds – City may withhold all or any portion of Grant Amount not yet disbursed hereunder, regardless of whether Grantee has previously submitted a funding request or whether City has approved the disbursement of the Grant Amount requested in any funding request. Any Grant Amount withheld pursuant to this Section and subsequently disbursed to Grantee after cure of applicable Events of Default, if granted by the City in its sole discretion, shall be disbursed without interest.

D. Offset – City may offset against all or any portion of undisbursed Grant Funds hereunder or against any payments due to Grantee under any other agreement between Grantee and City the amount of any outstanding Loss incurred by any Indemnified Party, including any Loss incurred as a result of the Event of Default.

E. Return of Grant Funds – City may demand from Grantee the immediate return of any previously disbursed Grant Funds that have been claimed or expended by Grantee in breach of the terms of this Agreement, together with interest thereon from the date of disbursement at the maximum rate permitted under applicable law, and any Work Product.

F. Refuse to Consider Future Grantee Applications – City may refuse to consider any future application for grants or agreements from Grantee or its affiliates upon the occurrence of any of the above events until such time as the breach or problem has been remedied or satisfied to the City's satisfaction, in its sole discretion.

Section 14.03 – Remedies Nonexclusive

Each of the remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The remedies contained herein are in addition to all other remedies available to City at law or in equity by statute or otherwise and the exercise of any such remedy shall not preclude or in any way be deemed to waive any other remedy.

Section 14.04 – Termination for Convenience

City shall have the option, in its sole discretion, to terminate this Agreement at any time for convenience and without cause. City shall exercise this option by giving Grantee written notice that specifies the effective date of termination. Upon receipt of the notice of termination, Grantee shall undertake with diligence all necessary actions to effect the termination of this Agreement on the date specified by City and minimize the liability of Grantee and City to third parties. Such actions shall include, without limitation:

- A. Halting the performance of all work under this Agreement on the date(s) and in the manner specified by City;
- B. Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, services, equipment or other items; and
- C. Completing performance of any work that City designates to be completed prior to the date of termination specified by City.

In no event shall City be liable for costs incurred by Grantee or any of its subcontractors after the termination date specified by City, except for those costs incurred at the request of City pursuant to this section.

**ARTICLE 15
DISCLOSURE OF INFORMATION AND DOCUMENTS**

Section 15.01 – Proprietary or Confidential Information of City

Grantee understands and acknowledges that, in the performance of this Agreement or in contemplation thereof, Grantee may have access to private or confidential information that may be owned or controlled by City and that such information may contain proprietary or confidential information, the disclosure of which to third parties may be damaging to City. Grantee agrees that all information disclosed by City to Grantee shall be held in confidence and used only in the performance of this Agreement. Grantee shall exercise the same standard of care to protect such information as a reasonably prudent nonprofit entity would use to protect its own proprietary or confidential data.

Section 15.02 – Public Disclosure

A. Grantee acknowledges and agrees that under the City’s Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (California Government Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. Contracts, including this Agreement, Grantee’s bids, responses to Requests for Proposals or (RFQs) and all other records of communications between City and persons or entities seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in such Section 67.24(e) (as it exists on the date hereof) requires the disclosure of a private person’s or organization’s net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. All information provided by Grantee that is covered by such Section 67.24(e) (as it may be amended from time to time) will be made available to the public upon request.

B. If Grantee receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Grantee shall comply with and be bound by all the applicable provisions of Chapter 12L of the San Francisco Administrative Code. By executing this Agreement, Grantee agrees to open its meetings and records to the public in the manner set forth in Sections 12L.4 and 12L.5 of the San Francisco Administrative Code. Grantee further agrees to make good-faith efforts to promote community membership on its Board of Directors in the manner set forth in Section 12L.6 of the Administrative Code. Grantee acknowledges that its failure to comply with any of the provisions of this Section shall constitute a material breach of this Agreement. Grantee further acknowledges that such material breach of this Agreement shall be grounds for the City to terminate and/or not renew this Agreement, partially or in its entirety.

C. In accordance with the Citizen’s Right to Know Act of 1998 (Chapter 79 of the San Francisco Administrative Code), no officer, department, board or commission of the City shall approve a City Work Program, as defined in Chapter 79, unless a sign has been posted on the applicable property at least fifteen (15) days prior to such approval. A City Work Program is a project that involves new construction, a change in use or a significant expansion of an existing use where the City Funding for such project is \$50,000 or more. If the Grant Amount will be used for a City Work Program, this Agreement will not become effective until fifteen (15) days following the posting of the requisite sign (the “Sign Date”) under Chapter 79, and the City shall have the right to nullify or revoke this Agreement, without cost or liability of any sort whatsoever, at any time prior to the Sign Date. If Grantee believes that this Agreement relates to a City Work Program and that the requisite sign has not been posted, Grantee shall notify the City so that the City may determine the applicability of Chapter 79, and, if necessary, post the requisite sign.

**ARTICLE 16
INDEPENDENT CONTRACTOR STATUS**

Section 16.01 – Nature of Agreement

Grantee shall be deemed at all times to be an independent contractor and is solely responsible for the manner in which Grantee implements the Work Program and uses the Grant Funds. Grantee shall at all times remain solely liable for the acts and omissions of Grantee, its officers and directors, employees and agents. Nothing in this Agreement shall be construed as creating a partnership, joint venture, employment or agency relationship between City and Grantee. Grantee is not a state or governmental actor with respect to any activity conducted by Grantee hereunder. This Agreement does not constitute authorization or approval by the City of any activity conducted by Grantee.

Nothing contained in this Agreement shall create or justify any claim against the City or Grantee by any third person with whom Grantee may have contracted or may contract relative to the furnishing or performance of any work, materials, equipment or services relating to the Work Program or with respect to any other projects being undertaken by Grantee or the City. The provisions of this Agreement are not intended to benefit any third party, and no third party may rely hereon.

Section 16.02 – Direction

Any terms in this Agreement referring to direction or instruction from MOHCD or City shall be construed as providing for direction as to policy and the result of Grantee’s work only, and not as to the means by which such a result is obtained.

Section 16.03 – Consequences of Recharacterization

A. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Grantee is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Grantee which can be applied against this liability). City shall subsequently forward such amounts to the relevant taxing authority.

B. Should a relevant taxing authority determine a liability for past services performed by Grantee for City, upon notification of such fact by City, Grantee shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Grantee under this Agreement (again, offsetting any amounts already paid by Grantee which can be applied as a credit against such liability).

C. A determination of employment status pursuant to either subsection A or B of this Section 16.03 shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Grantee shall not be considered an employee of City. Notwithstanding the foregoing, if any court, arbitrator or administrative authority determines that Grantee is an employee for any other purpose, Grantee agrees to a reduction in City’s financial liability hereunder such that the aggregate amount of Grant Funds under this Agreement does not exceed what would have been the amount of such Grant Funds had the court, arbitrator or administrative authority had not determined that Grantee was an employee.

ARTICLE 17 NOTICES AND OTHER COMMUNICATIONS

Section 17.01 – Requirements

Unless otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests and other communications hereunder shall be in writing, shall be addressed to the person and address set forth below and shall be (a) deposited in the U.S. mail, first class, certified with return receipt requested and with appropriate postage, (b) hand delivered or (c) sent via e-mail (if an e-mail address is provided below):

If to MOHCD or City:
Mayor’s Office of Housing and
Community Development
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
Attn: Director
Email: Eric.Shaw@sfgov.org

If to Grantee:
Mercy Housing California
1256 Market Street
San Francisco, CA 94102
Email: rdare@mercyhousing.org
Attn: Director

Any notice of default must be sent by registered mail or personal delivery.

17.02 – Effective Date

All communications sent in accordance with Section 17.01 shall become effective on the date of receipt. Such date of receipt shall be determined by: (a) if mailed, the return receipt, completed by the U.S. postal service; (b) if sent via hand delivery, a receipt executed by a duly authorized agent of the party to whom the notice was sent; or (c) if sent via e-mail, the date of confirmation of receipt by a duly authorized agent of the party to whom the notice was sent or, if such confirmation is not reasonably practicable, the date indicated in the e-mail of the party giving such notice.

Section 17.03 – Change of Address

Any party hereto may designate a new address for purposes of this Article 17 by notice to the other party.

ARTICLE 18 COMPLIANCE

Section 18.01 – Nondiscrimination; Equal Benefits; and Penalties.

A. **Grantee Shall Not Discriminate** – In the performance of this Agreement, Grantee agrees not to discriminate against any employee, City and County employee working with such grantee or subgrantee, applicant for employment with such grantee or subgrantee, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

B. **Subcontracts** – Grantee shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Grantee's failure to comply with any of the obligations in this subsection shall constitute a material breach of this Agreement.

C. **Non-Discrimination in Benefits** – Grantee does not as of the date of this Agreement and will not during the Term of this Agreement, in any of its operations in San Francisco or where work is being performed for City elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

D. **Condition to Contract** – As a condition to this Agreement, Grantee shall execute the “Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits” form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Division.

E. **Incorporation of Administrative Code Provisions by Reference** – The provisions of Chapters 12B, and 12C of the San Francisco Administrative Code relating to nondiscrimination by parties contracting with the City and County of San Francisco, are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Grantee shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including the remedies provided in such Chapters. Without limiting the foregoing, Grantee understands that pursuant to Section 12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of fifty dollars (\$50) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Grantee and/or deducted from any payments due Grantee. Grantee's failure to comply with any of the obligations in this paragraph shall constitute a material breach of this Agreement.

Section 18.02 – MacBride Principles-Northern Ireland

Pursuant to San Francisco Administrative Code Section 12F.5, City urges companies doing business in Northern Ireland to move towards resolving employment inequities and encourages such companies to abide by the MacBride Principles. City urges San Francisco companies to do business with grantees that abide by the MacBride Principles. By signing below, the person executing this Agreement on behalf of Grantee acknowledges and agrees that he or she has read and understood this Section.

Section 18.03 – Tropical Hardwood and Virgin Redwood Ban

Pursuant to Section 804(b) of the San Francisco Environment Code, City urges all grantees not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

Section 18.04 – Drug-Free Workplace Policy

Grantee acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Grantee and its employees, agents or assigns shall comply with all terms and provisions of such Act and the rules and regulations promulgated thereunder.

Section 18.05 – Resource Conservation; Liquidated Damages

Chapter 5 of the San Francisco Environment Code (Resource Conservation) is incorporated herein by reference. Failure by Grantee to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract. If Grantee fails to comply in good faith with any of the provisions of Chapter 5, Grantee shall be liable for liquidated damages in an amount equal to Grantee's net profit under this Agreement, or five percent (5%) of the total contract amount, whichever is greater. Grantee acknowledges and agrees that the liquidated damages assessed shall be payable to City upon demand and may be offset against any monies due to Grantee from any contract with City.

Section 18.06 – Compliance with ADA

Grantee acknowledges that, pursuant to the Americans With Disabilities Act (ADA) (42 U.S.C. Sections 12101 et seq.) and any other applicable federal, state or local laws (including Section 504 of the Rehabilitation Act of 1973), programs, services and other activities provided by a public entity to the public, whether directly or through a grantee or contractor, must be accessible to the disabled public. Grantee shall not discriminate against any person protected under the ADA in connection with all or any portion of the Work Program and shall comply, and shall require its contractors and consultants to comply, with the provisions of the ADA and any and all other applicable federal, state and local disability rights legislation.

Section 18.07 – Requiring Minimum Compensation for Employees

A. Grantee shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Grantee is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of the Chapter 12P on the web at <http://sfgov.org/olse/mco>. Grantee is required to comply with all of the applicable provisions of 12P, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Grantee certifies that it complies with Chapter 12P.

B. Grantee's commitment to provide the Minimum Compensation is a material element of City's consideration for this Agreement. City in its sole discretion shall determine whether such a breach has occurred. City and the public will suffer actual damage that will be impractical or extremely difficult to determine if Grantee fails to comply with these requirements. Grantee agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that City and the public will incur for Grantee's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

C. Grantee understands and agrees that if it fails to comply with the requirements of the MCO, City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within thirty (30) days after receiving written notice of a breach of this Agreement for violating the MCO, Grantee fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Grantee fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

D. Grantee represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

1. If Grantee is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the Fiscal Year is less than \$25,000, but Grantee later enters into an agreement or agreements that cause Grantee to exceed that amount in a Fiscal Year, Grantee shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Grantee and this department to exceed \$25,000 in the fiscal year.

Section 18.08 – Notification of Prohibition on Contributions

Through execution of this Agreement, Grantee acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, or from any department of the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved. Grantee acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$100,000 or more. Grantee further acknowledges that the (i) prohibition on contributions applies to each Grantee; each member of Grantee's board of directors; Grantee's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Grantee; any subgrantee listed in the bid or contract; and any committee that is sponsored or controlled by Grantee; and (ii) within thirty (30) days of the submission of a proposal for the contract, the City department with whom Grantee is contracting is obligated to submit to the Ethics Commission the parties to the contract and any subgrantee. Additionally, Grantee certifies that Grantee has informed each of the persons described in the preceding sentence of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

Section 18.09 – First Source Hiring Program

If the Grant is (i) for public services, economic development, microenterprise assistance, or planning and the Grant Amount is Fifty Thousand Dollars (\$50,000) or greater, or (ii) for capital projects or construction funding and the Grant Amount is Three Hundred Fifty Thousand Dollars (\$350,000) or greater, then Grantee shall comply with the hiring requirements imposed by City's First Source Hiring Ordinance (San Francisco Administrative Code Chapter 83), which are incorporated herein by this reference. Upon request by MOHCD, Grantee agrees to separately execute the attached First Source Hiring Agreement, although the lack of such a separate execution shall not affect the requirements of the agreement as incorporated herein.

A. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Grantee shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

B. First Source Hiring Agreement. As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Grantee shall enter into a first source hiring agreement

("agreement") with the City, on or before the effective date of the contract or property contract. Grantees shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

1. Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs may be certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.
2. Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.
3. Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term jobs need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.
4. Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.
5. Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.
6. Set the term of the requirements.
7. Set appropriate enforcement and sanctioning standards consistent with this Chapter.
8. Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.
9. Require the Developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

C. Hiring Decisions. Grantee shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

D. Exceptions. Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

E. Liquidated Damages. Grantee agrees:

1. To be liable to the City for liquidated damages as provided in this Section;
2. To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this Section;
3. That the Grantee's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.
4. That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;
5. That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this Section is based on the following data:
 - a. The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and
 - b. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year; therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.
6. That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and
7. That in the event the City is the prevailing party in a civil action to recover liquidated damages for breach of a contract provision required by this Chapter, the contractor will be liable for the City's costs and reasonable attorneys' fees.

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

F. **Subcontracts.** Any subcontract entered into by Grantee shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

G. To the extent they overlap, Grantee may comply with the requirements of this Section 18.09 by complying with the Section 3 requirements set forth in Section 18.19 (C) below.

Section 18.10 – Prohibition on Political Activity with City Funds

In accordance with San Francisco Administrative Code Chapter 12.G, no funds appropriated by City for this Agreement may be expended for organizing, creating, funding, participating in, supporting, or attempting to influence any political campaign for a candidate or for a ballot measure (collectively, “Political Activity”). The terms of San Francisco Administrative Code Chapter 12.G are incorporated herein by this reference. Accordingly, an employee working in any position funded under this Agreement shall not engage in any Political Activity during the work hours funded hereunder, nor shall any equipment or resource funded by this Agreement be used for any Political Activity. In the event Grantee, or any staff member in association with Grantee, engages in any Political Activity, then (i) Grantee shall keep and maintain appropriate records to evidence compliance with this Section, and (ii) Grantee shall have the burden to prove that no funding from this Agreement has been used for such Political Activity. Grantee agrees to cooperate with any audit by City or its designee in order to ensure compliance with this Section. In the event Grantee violates the provisions of this Section, City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement and any other agreements between Grantee and City, (ii) prohibit Grantee from bidding on or receiving any new City contract for a period of two (2) years, and (iii) obtain reimbursement of all funds previously disbursed to Grantee under this Agreement.

Section 18.11 – Preservative-treated Wood Containing Arsenic

Grantee may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term “preservative-treated wood containing arsenic” shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Grantee may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Grantee from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term “saltwater immersion” shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

Section 18.12 – Supervision of Minors

A. If Grantee, or any subgrantee, is providing services to the City involving the supervision or discipline of minors or where Grantee, or any subgrantee, will be working with minors in an unaccompanied setting on more than an incidental or occasional basis, Grantee and any subgrantee shall comply with any and all applicable requirements under federal or state law mandating criminal history screening for such positions and/or prohibiting employment of certain persons including but not limited to California Penal Code Section 290.95. In the event of a conflict between this section and Section 18.16, "Consideration of Criminal History in Hiring and Employment Decisions," of this Agreement, this section shall control. Grantee shall expressly require any of its subgrantees with supervisory or disciplinary power over a minor to comply with this section of the Agreement as a condition of its contract with the subgrantee. Grantee acknowledges and agrees that failure by Grantee or any of its subgrantees to comply with any provision of this section of the Agreement shall constitute an Event of Default.

B. Grantee, and any subgrantees, shall comply with California Penal Code Section 11105.3 and request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in Welfare and Institution Code Section 15660(a) of any person who applies for employment or volunteer position with Grantee, or any subgrantee, in which he or she would have supervisory or disciplinary power over a minor under his or her care.

C. In accordance with California Public Resources Code Section 5164, If Grantee, or any subgrantee, is providing services at a City park, playground, recreational center or beach (separately and collectively, “Recreational Site”), Grantee shall not hire, and shall prevent its subgrantees from hiring, any person for

employment or volunteer position to provide those services if that person has been convicted of any offense listed in in Public Resources Code Section 5164.

D. If Grantee, or any of its subgrantees, hires an employee or volunteer to provide services to minors at any location other than a Recreational Site, and that employee or volunteer has been convicted of an offense specified in Penal Code Section 11105.3(c), then Grantee shall comply, and cause its subgrantees to comply with that section and provide written notice to the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer not less than ten (10) days prior to the day the employee or volunteer begins his or her duties or tasks. Grantee shall provide, or cause its subgrantees to provide City with a copy of any such notice at the same time that it provides notice to any parent or guardian.

E. Grantee shall expressly require any of its subgrantees with supervisory or disciplinary power over a minor to comply with this Section of the Agreement as a condition of its contract with the subgrantee.

F. Grantee acknowledges and agrees that failure by Grantee or any of its subgrantees to comply with any provision of this Section of the Agreement shall constitute an Event of Default.

Section 18.13 – Protection of Private Information

Grantee has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, “Nondisclosure of Private Information,” and 12M.3, “Enforcement” of Administrative Code Chapter 12M, “Protection of Private Information,” which are incorporated herein as if fully set forth. Grantee agrees that any failure of Grantee to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Agreement, bring a false claim action against the Grantee pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Grantee.

Section 18.14 – Distribution of Beverages and Water

(a) **Sugar-Sweetened Beverage Prohibition.** Grantee agrees that it shall not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement.

(b) **Packaged Water Prohibition.** Grantee agrees that it shall not sell, provide, or otherwise distribute Packaged Water, as defined by San Francisco Environment Code Chapter 24, as part of its performance of this Agreement.

Section 18.15 – Food Service Waste Reduction Requirements

Grantee agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Grantee agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Grantee agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Grantee’s failure to comply with this provision.

Section 18.16 – Slavery Era Disclosure

If Grantee is providing (i) insurance or insurance services, (ii) financial services, or (iii) textiles, as part of its Work Program, then Grantee shall comply with the following requirements, unless Grantee falls within an exception (see Administrative Code Section 12Y.3):

(a) Grantee acknowledges that this Agreement shall not be binding upon City until the Director receives the affidavit required by the San Francisco Administrative Code’s Chapter 12Y, “San Francisco Slavery Era Disclosure Ordinance.”

(b) In the event the Director finds that Grantee has failed to file an affidavit as required by Section 12Y.4(a) and this Agreement, or has willfully filed a false affidavit, Grantee shall be liable for liquidated damages in an amount equal to Grantee's net profit on the Agreement, 10 percent of the total amount of the Agreement, or \$1,000, whichever is greatest as determined by the Director. Grantee acknowledges and agrees that the liquidated damages assessed shall be payable to City upon demand and may be set off against any monies due to the Grantee from any agreement with the City.

(c) Grantee shall maintain records necessary for monitoring their compliance with this provision.

Section 18.17 – Card Check Agreements

The City and County of San Francisco has enacted an Ordinance at Chapter 23, Article V of its Administrative Code, commencing at Section 23.50 (the “Card Check Ordinance”), which applies to Grantee if the Work Program relates to or involves a Hotel or Restaurant Work Program and Grantee employs, or intends to employ, fifty (50) or more full or part-time employees. The terms of the Card Check Ordinance are expressly incorporated herein by this reference. To the extent Grantee, or its successors or assigns, employs individuals in a hotel or restaurant within the scope of the Card Check Ordinance, Grantee agrees, as a material condition of this Agreement, to enter into and abide by a Card Check Agreement with a Labor Organization or Organizations seeking to represent Grantee’s employees, if and as required by the Card Check Ordinance, and to otherwise fully comply with the requirements of the Card Check Ordinance. Grantee recognizes that, if applicable, it must enter into a Card Check Agreement with a Labor Organization(s) as specified before executing this Agreement, and that being a party to such a Card Check Agreement is a condition precedent to the effectiveness of this Agreement.

Section 18.18 – Religious Activities

Grantee agrees that the Grant Amount will not be utilized for religious activities, such as worship, religious instruction or proselytization, or to promote religious interests. Grantee shall comply with applicable federal regulations, including those set forth in 24 C.F.R. 570.200(j). Grantee shall not, in performing the Work Program, discriminate against a person or entity on the basis of religion or religious belief.

Section 18.19 – Intentionally Omitted

Section 18.20 – Intentionally Omitted

Section 18.21 – Local Business Enterprise Utilization; Liquidated Damages

A. **The LBE Ordinance.** Contractor shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the “LBE Ordinance”), provided such amendments do not materially increase Contractor’s obligations or liabilities, or materially diminish Contractor’s rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor’s willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Contractor’s obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

B. Compliance and Enforcement

1. **Enforcement.** If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor’s net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City’s Contracts Monitoring Division or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the “Director of CMD”) may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the

Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's LBE certification. The Director of CMD will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17. By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the CMD shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City. Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of CMD or the Controller upon request.

2. **Subcontracting Goals.** The LBE subcontracting participation goal for this contract is ____%. Contractor shall fulfill the subcontracting commitment made in its bid or proposal. Each invoice submitted to City for payment shall include the information required in the CMD Progress Payment Form and the CMD Payment Affidavit. Failure to provide the CMD Progress Payment Form and the CMD Payment Affidavit with each invoice submitted by Contractor shall entitle City to withhold 20% of the amount of that invoice until the CMD Payment Form and the CMD Subcontractor Payment Affidavit are provided by Contractor. Contractor shall not participate in any back contracting to the Contractor or lower-tier subcontractors, as defined in the LBE Ordinance, for any purpose inconsistent with the provisions of the LBE Ordinance, its implementing rules and regulations, or this Section.
3. **Subcontract Language Requirements.** Contractor shall incorporate the LBE Ordinance into each subcontract made in the fulfillment of Contractor's obligations under this Agreement and require each subcontractor to agree and comply with provisions of the ordinance applicable to subcontractors. Contractor shall include in all subcontracts with LBEs made in fulfillment of Contractor's obligations under this Agreement, a provision requiring Contractor to compensate any LBE subcontractor for damages for breach of contract or liquidated damages equal to 5% of the subcontract amount, whichever is greater, if Contractor does not fulfill its commitment to use the LBE subcontractor as specified in the bid or proposal, unless Contractor received advance approval from the Director of CMD and contract awarding authority to substitute subcontractors or to otherwise modify the commitments in the bid or proposal. Such provisions shall also state that it is enforceable in a court of competent jurisdiction. Subcontracts shall require the subcontractor to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination of this contract and to make such records available for audit and inspection by the Director of CMD or the Controller upon request.
4. **Payment of Subcontractors.** Contractor shall pay its subcontractors within three working days after receiving payment from the City unless Contractor notifies the Director of CMD in writing within ten working days prior to receiving payment from the City that there is a bona fide dispute between Contractor and its subcontractor and the Director waives the three-day payment requirement, in which case Contractor may withhold the disputed amount but shall pay the undisputed amount. Contractor further agrees, within ten working days following receipt of payment from the City, to file the CMD Payment Affidavit with the Controller, under penalty of perjury, that the Contractor has paid all subcontractors. The affidavit shall provide the names and addresses of all subcontractors and the amount paid to each. Failure to provide such affidavit may subject Contractor to enforcement procedure under Administrative Code §14B.17.

Section 18.22 – Small Business Enterprise Program

Contractor shall comply with all the requirements of the Small Business Enterprise Program set forth in the Contract Monitoring Division's MOHCD Small Business Enterprise Program Manual as it now exists or as it may be amended in the future (collectively the "SBE Program"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the SBE Program are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provisions of the SBE Program is a material breach of Contractor's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the SBE Program or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

Section 18.23 – Consideration of Criminal History in Hiring and Employment Decisions.

A. Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, “City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions,” of the San Francisco Administrative Code (“Chapter 12T”), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

B. The requirements of Chapter 12T shall only apply to a Contractor’s or Subcontractor’s operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

C. Contractor shall incorporate by reference in all subcontracts the provisions of Chapter 12T, and shall require all subcontractors to comply with such provisions. Contractor’s failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

D. Contractor understands and agrees that if it fails to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to penalties for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

Section 18.24 – State Labor Standards

Grantee shall ensure that the requirement of Chapter I (commencing with Section 1720) of Part 7 of the California Labor Code (pertaining to the payment of prevailing wages and administered by the California Department of Industrial Relations) are met.

Subsection (a) of Labor Code section 1771.1 states that “a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.” Subsection (b) of Labor Code section 1771.1 states that “notice of the requirement described in subdivision (a) shall be included in all bid invitations and public works contracts, and a bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor’s current registration to perform public work pursuant to Section 1725.5.”

Section 18.25 – Compliance with Other Laws

Without limiting the scope of any of the preceding sections of this Article 18, Grantee shall keep itself fully informed of the City’s Charter, codes, ordinances and regulations and all state, and federal laws, rules and regulations affecting the performance of this Agreement and shall at all times comply with such Charter codes, ordinances, and regulations rules and laws.

Section 18.26 –Health Care Accountability Ordinance

Grantee shall comply with San Francisco Administrative Code Chapter 12Q. Grantee shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. Grantee is subject to the enforcement and penalty provisions in Chapter 12Q.

Section 18.27 – Payment Card Industry (“PCI”) Requirements

Payment Card Industry (“PCI”) Requirements. Grantees providing services and products that handle, transmit or store cardholder data, are subject to the following requirements:

(a) Applications shall be compliant with the Payment Application Data Security Standard (PA-DSS) and validated by a Payment Application Qualified Security Assessor (PA-QSA). A Grantee whose application has achieved PA-DSS certification must then be listed on the PCI Councils list of PA-DSS approved and validated payment applications.

(b) Gateway providers shall have appropriate Payment Card Industry Data Security Standards (PCIDS) as service providers (<https://www.pcisecuritystandards.org/index.shtml>). Compliance with the PCI DSS shall be achieved through a third party audit process. The Grantee shall comply with Visa Cardholder Information Security Program (CISP) and MasterCard Site Data Protection (SDP) programs.

(c) For any Grantee that processes PIN Debit Cards, payment card devices supplied by Grantee shall be validated against the PCI Council PIN Transaction Security (PTS) program.

(d) For items (a) to (c) above, Grantee shall provide a letter from their qualified security assessor (QSA) affirming their compliance and current PCI or PTS compliance certificate.

(e) Grantee shall be responsible for furnishing City with an updated PCI compliance certificate 30 calendar days prior to its expiration.

(f) Bank Accounts. Collections that represent funds belonging to the City and County of San Francisco shall be deposited, without detour to a third party’s bank account, into a City and County of San Francisco bank account designated by the Office of the Treasurer and Tax Collector.

Section 18.28 – Minimum Wage

Grantee shall comply fully with and be bound by all of the provisions of the Minimum Wage Ordinance (MWO), as set forth in Chapter 12R of the San Francisco Administrative Code, including the administrative fines, remedies, and penalties provided therein, as the same may be amended from time to time. The provisions of Chapter 12R are incorporated herein by reference and made a part of this Agreement as though fully set forth. The Chapter 12R is available on the web at <http://sfgov.org/olse/minimum-wage-ordinance-mwo>.

18.29 Duty to Collect and Record Client Sexual Orientation and Gender Identity Data

If Contractor will be providing services intended to assist clients with accessing health care, temporary shelter, transitional housing, and the Work Plan requires the Contractor to collect demographic information about clients, Contractor shall comply with San Francisco Administrative Code Chapter 104 by seeking to collect and record information about clients’ sexual orientation and gender identity, and reporting such data to MOHCD. In seeking to collect information about clients’ sexual orientation and gender identity, Contractor shall: (1) communicate to clients that the provision of sexual orientation and gender identity information is voluntary, and no direct services shall be denied to clients who decline to provide that information; (2) solicit gender identity and sexual orientation data using questions and approaches consistent with the Department of Public Health’s Policies and Procedures entitled “Sexual Orientation Guidelines: Principles for Collecting, Coding, and Reporting Identity Data,” reissued on September 2, 2014, and “Sex and Gender Guidelines: Principles for Collecting, Coding, and Reporting Identity Data,” reissued on September 2, 2014, or any successor Policies and Procedures; and (3) advise clients that they will protect personally identifiable information regarding clients’ sexual orientation and gender identity from unauthorized disclosure, to the extent permitted by law. The duty to collect information about gender identity and sexual orientation shall not apply to the extent such collection is incompatible with any professionally reasonable clinical judgment that is based on articulable facts of clinical significance. Further, Contractor shall protect personally identifiable information from unauthorized disclosure, to the extent permitted by law and as required by the Health Insurance Portability and Accountability Act, the California Medical Information Act, Article 1 of the California Constitution, the California Health and Safety Code and regulations promulgated thereunder, the California Welfare and Institutions Code and regulations promulgated thereunder, and any other applicable provision of federal or state law.

18.30 Contractor Vaccination Requirements.

Grantee acknowledges that it has read the requirements of the 38th Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency (“Emergency Declaration”), dated February 25, 2020, and the Contractor Vaccination Policy for City Contractors issued by the City Administrator (“Contractor Vaccination Policy”), as those documents may be amended from time to time. A copy of the Contractor Vaccination Policy can be found at: <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors>. Any undefined, initially capitalized term used in this Section has the meaning given to that term in the Contractor Vaccination Policy. For the avoidance of any doubt, Grantee is a “contractor” under the Contractor Vaccination Policy. Capitalized terms used in this section that are not defined herein shall have the same meanings set forth in the Contractor Vaccination Policy.

A Contract as defined in the Emergency Declaration is an agreement between the City and any other entity or individual and any subcontract under such agreement, where Covered Employees of the contractor or subcontractor work in-person with City employees at a facility owned, leased, or controlled by the City. A Contract includes such agreements currently in place or entered into during the term of the Emergency Declaration. A Contract does not include an agreement with a state or federal governmental entity or agreements that does not involve the City paying or receiving funds.

Grantee has read the Contractor Vaccination Policy. In accordance with the Emergency Declaration, if this Grant is (or becomes) a Contract as defined in the Contractor Vaccination Policy, Grantee agrees that:

- (1) Grantee shall ensure it complies with the requirements of the Contractor Vaccination Policy pertaining to Covered Employees, as they are defined under the Emergency Declaration and the Contractor Vaccination Policy, and insure such Covered Employees are fully vaccinated for COVID-19 or obtain an exemption based on medical or religious grounds; and
- (2) If Grantee grants Covered Employees an exemption based on medical or religious grounds, Grantee will promptly notify City by completing and submitting the Covered Employees Granted Exemptions Form, which can be found at <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors> (navigate to “Exemptions” to download the form).

ARTICLE 19 MISCELLANEOUS

Section 19.01 – No Waiver

No waiver by MOHCD or City of any default or breach of this Agreement shall be implied from any failure by MOHCD or City to take action on account of such default if such default persists or is repeated. No express waiver by MOHCD or City shall affect any default other than the default specified in the waiver and shall be operative only for the time and to the extent therein stated. Waivers by MOHCD or City of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by MOHCD or City of any action requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.

Section 19.02 – Modification

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Any proposed amendment to this Agreement may be subject to the approval of the Funding Source agency where the City determines it is necessary.

Section 19.03 – Administrative Remedy for Agreement Interpretation

Should any question arise as to the meaning or intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the Director of MOHCD who shall decide the true meaning and intent of the Agreement. Such decisions shall be final and conclusive.

Section 19.04 – Governing Law; Venue

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, without regard to its conflict of laws principles. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

Section 19.05 – Headings

All article and section headings and captions contained in this Agreement are for reference only and shall not be considered in construing this Agreement.

Section 19.06 – Entire Agreement

This Agreement and the Application Documents set forth the entire Agreement between the parties, and supersede all other oral or written provisions. If there is any conflict between the terms of this Agreement and the Application Documents, the terms of this Agreement shall govern. The following appendices are attached to and a part of this Agreement:

Appendix A:	Work Program(s) and Project Budget(s)
Appendix B:	Interests in Other City Contracts
Appendix C:	Monthly Report
Appendix D:	A diagram of Grantee’s interest in the Project and the structure

Section 19.07 – Certified Resolution of Signatory Authority

Upon request of City, Grantee shall deliver to City a copy of the corporate resolution(s) authorizing the execution, delivery and performance of this Agreement, certified as true, accurate and complete by the secretary or assistant secretary of Grantee.

Section 19.08 – Severability

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

Section 19.09 – Successors; No Third-Party Beneficiaries

Subject to the terms of Article 7, the terms of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Nothing in this Agreement, whether express or implied, shall be construed to give any person or entity (other than the parties hereto and their respective successors and assigns and, in the case of Article 12, the Indemnified Parties) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

Section 19.10 – Survival of Terms

The obligations of Grantee and the terms of the following provisions of this Agreement shall survive and continue following expiration or termination of this Agreement:

Section 4.3	Ownership of Results.
Section 6.4	Financial Statements.
Section 6.5	Books and Records.
Section 6.6	Inspection and Audit.
Section 6.7	Submitting False Claims; Monetary Penalties
Article 7	Taxes
Article 8	Representations and Warranties
Article 9	Indemnification and General Liability
Section 10.4	Required Post-Expiration Coverage.
Article 12	Disclosure of Information and Documents
Section 13.4	Grantee Retains Responsibility.
Section 14.3	Consequences of Recharacterization.
This Article 17	Miscellaneous

Section 19.11 – Grievance Procedures

Grantee shall maintain written grievance procedures, which allow Grantee’s employees, clients and any subcontractors to submit complaints regarding the activities funded by this Agreement. Grantee shall inform its employees, clients and subcontractors of their rights to submit a complaint and shall provide a written copy of its grievance procedure upon request.

Section 19.12 – Attendance at Meetings

If requested by City, Grantee’s Executive Director, Program Director or other designated staff shall attend specified meetings. Failure to attend said meetings without adequate reason as determined by City should be grounds for termination of this Agreement.

Section 19.13 – Further Assurances

From and after the date of this Agreement, Grantee agrees to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper and usual to complete the transactions contemplated by this Agreement and to carry out the purpose of this Agreement in accordance with this Agreement.

Section 19.14 – Cooperative Drafting

This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

Section 19.15 – Departmental Transition and Continuity (Section for ESG Grants only)

Over the course of the term of this Agreement, it is anticipated that management of this contract on behalf of the City shall transfer from MOHCD to a new department which shall be established for the purpose of coordinating homeless services. As part of the transfer, the departmental contact and invoicing procedures specified in this Agreement may shift from MOHCD to the new department, however the responsibilities under this Agreement shall not change. MOHCD shall notify Contractor/Grantee of the new departmental contact and invoicing procedures. At such time as notice is given, all references in this Agreement to MOHCD or the “Department” shall be construed as a reference to the new department.

SIGNATURES ON THE NEXT PAGE

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first specified herein. The signatories to this Agreement warrant and represent that they have the authority to enter into this agreement on behalf of the respective parties and to bind them to the terms of this Agreement

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

GRANTEE: Mercy Housing California, a California nonprofit public benefit corporation

BY: _____
LONDON N. BREED, Mayor

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

BY: _____
ERIC D. SHAW, Director
Mayor's Office of Housing and Community Development

I have read and understood Section 18.02, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

APPROVED AS TO FORM:

I have read the conflict of interest provisions under Section 11.04 and certify that I will comply with all provisions and identify instances where conflict of interest may exist.

DAVID CHIU
CITY ATTORNEY

BY: _____

BY: _____
Heidi Gewertz Deputy City Attorney

Print Name: Ramie Dare

Title: Director

(If the person signing is **NOT** the Board President/Chair or other officer authorized to execute legal instruments under Grantee's Bylaws, Grantee must provide City with a corporate resolution pursuant to Section 19.07)

Acknowledgement and Consent for Section 8.08 of this Agreement

HOUSING AUTHORITY OF THE CITY AND COUNTY
OF SAN FRANCISCO,
a public body corporate and politic

By: _____
 Germaine Tonia Lediju, PhD

It's: Chief Executive Officer

APPROVED AS TO FORM AND LEGALITY:

Dianne Jackson McLean, Esq.
Goldfarb & Lipman LLP
Special Counsel to Authority

MOHCD Grant Agreement from Start Date to Project Completion \$11,000,000 Final Amount**
MOHCD Grant Coordinator: Helen Hale

**The Grant amount is contingent on the availability of funds from the Funding Source as allocated and approved by the Mayor and the Board of Supervisors. MOHCD reserves the right to make necessary correction and adjustment to the Grant Amount if there are errors or discrepancies.

Appendix A

Agency Name: []
Project ID: []

Fund Source Information, Work Program and Project Budget

Funding Source(s) Information:

Funding Source Name	
MOHCD General Fund Grant	\$11,000,000
New Market Tax Credit	\$[13,141,440.00]
Mercy Contribution	\$ [19,474,224.00]
NMTC Financing Structure Fees	([3,263,664])
Project Budget Total	\$40,352,000

WORK PROGRAM AND PROJECT BUDGET FOLLOWS THIS PAGE

Appendix B—Interests In Other City Contracts

City Department or Commission	Date of Contract	Amount of Contract

Appendix C
Monthly Report

Appendix D
A diagram of Grantee's interest in the Project and the structure

Free Recording Requested Pursuant to
Government Code Section 27383

Recording requested by and
when recorded mail to:
City and County of San Francisco
Mayor's Office of Housing
and Community Development
1 South Van Ness Avenue, 5th Floor
San Francisco, California 94103
Attn: _____

APN#:
Address: 1550 Sunnysdale Avenue, San Francisco, CA 94134

-----Space Above This Line for Recorder's Use-----

DECLARATION OF RESTRICTIONS
1550 Sunnysdale Avenue, San Francisco

THIS DECLARATION OF RESTRICTIONS (this "Declaration") is made as of _____, 2022, by Mercy Housing California, a California nonprofit public benefit corporation ("Grantee"), and Sunnysdale Avenue Community Center, a California nonprofit public benefit corporation ("Lessee"), in favor of the **CITY AND COUNTY OF SAN FRANCISCO**, represented by the Mayor, acting through the Mayor's Office of Housing and Community Development (the "City").

RECITALS

A. The City is making a grant (the "Grant") to Grantee to finance costs associated with the development of the leasehold interest in the real property described in **Exhibit A** (the "Property") as a community center (the "Project"). The Grant is evidenced by the Grant Agreement between the City and the Grantee dated as of _____, 2022 as it may be amended from time to time (the "Agreement"), pursuant to which the Grantee has agreed to undertake certain obligations for the benefit of the City. Definitions and rules of interpretation set forth in the Agreement apply to this Declaration.

B. Grantee does not own or operate the Project and instead has another interest in the Project satisfactory to the City, using a Federal New Markets Tax Credit structure (the "NMTC Financing Structure") as included in the Structure Chart attached to the Agreement. Grantee shall satisfy the terms and conditions of the Agreement by satisfying, or causing the satisfaction of, the Project construction, operation, reporting, and other terms and conditions of the Agreement.

C. Lessee has entered into a ground lease as "Lessee" with the Housing Authority of the City and County of San Francisco as "Lessor" dated _____, for the

Property (the “Ground Lease”) upon which the improvements for the Project shall be constructed.

AGREEMENT

Now, therefore, in consideration of the City providing the Grant in accordance with the Grant Agreement, Grantee and Lessee agree as follows:

1. Lessee must comply with the following requirements (the “Regulatory Obligations”) through the term of the Ground Lease, including any extensions thereof. Specifically, Grantee and Lessee agree as follows, subject to additional terms as set forth in the Agreement.

- a. Use Requirements

Lessee agrees that subleases and sub-subleases under the Ground Lease, and as consistent with the Agreement, will only be entered into with commercial entities that support community center goals, including but not limited to: (1) youth programs; (2) early childhood education programs and outdoor space available to low-income children; (3) neighborhood space with community and multi-purpose rooms, and outdoor recreation areas available to the Sunnydale community and the Visitacion Valley neighborhood; and (4) programs that provide educational programming and community-building programs to the local community, including health and wellness services or programming and adult education and/or professional development services or programming.

- b. Monitoring and Reporting

- i. Lessee agrees to comply with monthly reporting requirements imposed by City to meet performance standards required by the Agreement, including, but not limited to any reporting requirements included under Article 4 and Article 9 of the Agreement.
- ii. This Declaration and the Regulatory Obligations constitute covenants running with the land, including the leasehold and sub-leasehold interest therein and bind successors and assigns of Grantee and Lessee and any non-grantee owner and lessee of the Property. In the event that Lessee fails to comply with the Regulatory Obligations to the City's satisfaction, in its sole discretion, within thirty (30) days of Lessee's receipt of notice from the City to so comply, or if such cure cannot reasonably be completed within such thirty (30) day period, Lessee fails to commence such cure or having commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time period thereafter, provided that such time period does not exceed any longer period of time as deemed necessary by the City in its sole discretion, then the

City at its option may exercise any rights available at equity or in law, including, without limitation, instituting an action for specific performance, except that in no event shall the City have a right of monetary recovery against Lessee. Grantee shall pay the City's costs in connection with the City's enforcement of the terms of this Declaration, including, without limitation, the City's attorneys' fees, and costs.

Grantee and Lessee have executed this Declaration as of the date first written above.

"GRANTEE" Mercy Housing California,
A California nonprofit public benefit corporation

By: _____
Ramie Dare, Vice President

"LESSEE" Sunnydale Avenue Community Center,
A California nonprofit public benefit corporation

By: _____
Ramie Dare, Vice President

[ALL SIGNATURES MUST BE NOTARIZED.]

EXHIBIT A

(Legal Description of the Property)

A LEASEHOLD INTEREST IN THE FOLLOWING LAND SITUATED IN THE CITY OF SAN FRANCISCO, COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

Street Address:



San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102

Phone: 415.252.3100 . Fax: 415.252.3112

ethics.commission@sfgov.org . www.sfethics.org

Received On:

File #: 221075

Bid/RFP #:

Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

1. FILING INFORMATION

TYPE OF FILING	DATE OF ORIGINAL FILING (for amendment only)
Original	
AMENDMENT DESCRIPTION – Explain reason for amendment	

2. CITY ELECTIVE OFFICE OR BOARD

OFFICE OR BOARD	NAME OF CITY ELECTIVE OFFICER
Board of Supervisors	Members

3. FILER'S CONTACT

NAME OF FILER'S CONTACT	TELEPHONE NUMBER
Angela Calvillo	415-554-5184
FULL DEPARTMENT NAME	EMAIL
office of the clerk of the Board	Board.of.Supervisors@sfgov.org

4. CONTRACTING DEPARTMENT CONTACT

NAME OF DEPARTMENTAL CONTACT	DEPARTMENT CONTACT TELEPHONE NUMBER
Sara Amara1	628-652-5808
FULL DEPARTMENT NAME	DEPARTMENT CONTACT EMAIL
MYR Mayor's Office of Com. Dev.	sara.amara1@sfgov.org

5. CONTRACTOR	
NAME OF CONTRACTOR Mercy Housing California	TELEPHONE NUMBER 415-355-7100
STREET ADDRESS (including City, State and Zip Code) 1256 Market St, San Francisco, CA 94103	EMAIL ramie.dare@mercyhousing.org

6. CONTRACT		
DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)	ORIGINAL BID/RFP NUMBER	FILE NUMBER (If applicable) 221075
DESCRIPTION OF AMOUNT OF CONTRACT \$11,000,000		
NATURE OF THE CONTRACT (Please describe) A Grant Agreement with Mercy Housing California, a nonprofit California public benefit corporation for a total grant amount not to exceed \$11,000,000 to finance the construction of an approximately 28,000 square foot community center, consisting of an 8,000square foot child care center; a 12,000square foot space for the San Francisco Boys and Girls Club, and an 8,000square foot neighborhood space that will include community rooms and outdoor space, which will be known as Sunnydale HOPE SF Community Building.		

7. COMMENTS

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
<input checked="" type="checkbox"/>	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
<input type="checkbox"/>	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Shoemaker	Doug	Other Principal Officer
2	Tuvilla	Alvin	Other Principal Officer
3	Gualco	Barbara	Other Principal Officer
4	Saab	Bruce	Other Principal Officer
5	Holder	Ed	Other Principal Officer
6	Villablanca	Erika	Other Principal Officer
7	Lew-Hailer	Lillian	Other Principal Officer
8	Clayton	Melissa	Other Principal Officer
9	Dare	Ramie	Other Principal Officer
10	Ciraulo	Rich	Other Principal Officer
11	Sprague	Rick	Other Principal Officer
12	Daues	Stephan	Other Principal Officer
13	Dunn	Tim	Other Principal Officer
14	Bayley	Amy	Other Principal Officer
15	Payne	Chad	Other Principal Officer
16	Rosenblum	Joe	Other Principal Officer
17	Bradnt	Julie	Board of Directors
18	Cox	Brad	Board of Directors
19	Fernandez Smith	Kay	Board of Directors

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
20	Garcia	Christina	Board of Directors
21	Hayner	Jamarah	Board of Directors
22	Hughes	Phyllis	Board of Directors
23	Jamason	Ellen	Board of Directors
24	Lee	Christopher	Board of Directors
25	Levine	David	Board of Directors
26	Mersey	Ezra	Board of Directors
27	Pavao	William	Board of Directors
28	Rodriguez	Guillermo	Board of Directors
29	Ruggiero	Janet	Board of Directors
30	Saez	Miriam	Board of Directors
31	Soni	Monica	Board of Directors
32			
33			
34			
35			
36			
37			
38			

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
39			
40			
41			
42			
43			
44			
45			
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47			
48			
49			
50			

Check this box if you need to include additional names. Please submit a separate form with complete information. Select “Supplemental” for filing type.

10. VERIFICATION

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

<p>SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK</p> <p>BOS Clerk of the Board</p>	<p>DATE SIGNED</p>
---	---------------------------

From: [Conine-Nakano, Susanna \(MYR\)](#)
To: [BOS Legislation, \(BOS\)](#)
Cc: [Paulino, Tom \(MYR\)](#); [Gee, Natalie \(BOS\)](#); [Amaral, Sara \(MYR\)](#); [Nickolopoulos, Sheila \(MYR\)](#); [Gluckstein, Lisa \(MYR\)](#); [Geithman, Kyra \(MYR\)](#)
Subject: Mayor -- Resolution -- Sunnydale HOPE SF Community Building
Date: Tuesday, October 18, 2022 4:21:34 PM
Attachments: [Mayor -- Resolution -- Sunnydale HOPE SF Community Building.zip](#)

Hello Clerks,

Attached for introduction to the Board of Supervisors is a Resolution approving and authorizing the Director of the Mayor's Office of Housing and Community Development to execute a Grant Agreement with Mercy Housing California, a nonprofit California public benefit corporation for a total grant amount not to exceed \$11,000,000 to finance the construction of an approximately 28,000 square foot community center ,consisting of an 8,000 square foot childcare center; a 12,000 square foot space for the San Francisco Boys and Girls Club, and an 8,000 square foot neighborhood space that will include community rooms and outdoor space, which will be known as Sunnydale HOPE SF Community Building; and adopting findings that the grant agreement is consistent with the adopted Mitigation Monitoring and Reporting Program under the California Environmental Quality Act, the General Plan, and the eight priority policies of Planning Code, Section 101.1.

Please note that Supervisor Walton is a co-sponsor of this legislation.

Please let me know if you have any questions.

Best,
Susanna

Susanna Conine-Nakano
Office of Mayor London N. Breed
City & County of San Francisco
1 Dr. Carlton B. Goodlett Place, Room 200
San Francisco, CA 94102
415-554-6147