

CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT OF CHILDREN, YOUTH,
AND THEIR FAMILIES
1390 MARKET STREET, SUITE 900
SAN FRANCISCO, CA 94102

Modification No. 2

This Modification is made this **May 4, 2016**, in the City and County of San Francisco, State of California, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, hereinafter referred to as "City", acting by and through the Department of Children, Youth, and Their Families, hereinafter referred to as "DCYF", and YMCA - Urban Services, hereinafter referred to as "Grantee".

RECITALS

WHEREAS, City and Grantee have entered into the Agreement for TARC: and

WHEREAS, City wishes to amend Section 3.2, 5.1,16.16 and Appendix B and

WHEREAS, City and Grantee wish to modify the Agreement on the terms and conditions set forth herein;

NOW, THEREFORE, Grantee and City agree as follows:

1. **Definitions.** The following definitions shall apply to this Modification:

(a) **Agreement.** The term Agreement shall mean the Agreement dated **July 1, 2013** between Grantee and City as amended by the:

First Amendment: July 1, 2014

Second Amendment: N/A

Third Amendment: N/A

Fourth Amendment: N/A

Fifth Amendment: N/A

(b) **Other Terms.** Terms used and not defined in this Modification shall have the meanings assigned to such terms in the Agreement.

2. **Modifications to the Agreement.** The Agreement is hereby modified as follows:

ARTICLE 3 –TERM

Section 3.2 of the agreement currently reads as follows:

3.2 Duration of Term. The term of this Agreement shall commence on the later of (a) **JULY 1, 2013** and (b) the effective date specified in Section 3.1. Such term shall end at 11:59 p.m. San Francisco time on **JUNE 30, 2016.**

Section 3.2 of the agreement amended in its entirety to read as follows:

3.2 Duration of Term. The term of this Agreement shall commence on the later of (a) **JULY 1, 2013** and (b) the effective date specified in Section 3.1. Such term shall end at 11:59 p.m. San Francisco time on **JUNE 30, 2018.**

3.3 Termination for Convenience

a. City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor

written notice of termination. The notice shall specify the date on which termination shall become effective.

b. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

- (1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.
- (2) Not placing any further orders or subcontracts for materials, services, equipment or other items.
- (3) Terminating all existing orders and subcontracts.
- (4) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- (5) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
- (6) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.
- (7) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

c. Within 30 days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:

- (1) The reasonable cost to Contractor, without profit, for all services and other work City directed Contractor to perform prior to the specified termination date, for which services or work City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.
- (2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.
- (3) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.
- (4) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the services or other work.

d. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to,

anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to Contractor under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Contractor's final invoice; (2) any claim which City may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

f. City's payment obligation under this Section shall survive termination of this Agreement.

ARTICLE 5 - USE AND DISBURSEMENT OF GRANT FUNDS

Section 5.1 of the agreement currently reads as follows:

The amount of the Grant Funds disbursed hereunder shall not exceed Nine Hundred Sixty Thousand Five Hundred Twenty One Dollars and No Cents (\$960,521.00) for the period from July 1, 2013 to June 30, 2016, plus any contingent amount authorized by City and certified as available by the Controller.

Contingent amount: Up to Ninety Six Thousand Fifty Two Dollars and No Cents (\$96,052.00) for the period from July 1, 2013 to June 30, 2016, may be available, in the City's sole discretion, as a contingency subject to authorization by the City and certified as available by the Controller.

The maximum amount of Grant Funds disbursed hereunder shall not exceed One Million Fifty Six Thousand Five Hundred Seventy Three Dollars and No Cents (\$1,056,573.00) for the period from July 1, 2013 to June 30, 2016.

Section 5.1 is amended in its entirety to read as follows:

The amount of the Grant Funds disbursed hereunder shall not exceed One Million Five Hundred Seventy Five Thousand Eighty One Dollars and No Cents (\$1,575,081.00) for the periods as specified in Section 3.2, plus any contingent amount authorized by City and certified as available by the Controller.

Contingent amount: Up to One Hundred Fifty Seven Thousand Five Hundred Eight Dollars and No Cents (\$157,508.00) for the periods specified in Section 3.2, may be available, in the City's sole discretion, as a contingency subject to authorization by the City and certified as available by the Controller.

The maximum amount of Grant Funds disbursed hereunder shall not exceed One Million Seven Hundred Thirty Two Thousand Five Hundred Eighty Nine Dollars and No Cents (\$1,732,589.00) for the periods specified in Section 3.2.

Grantee understands that, of the maximum dollar disbursement listed in Section 5.1 of this Agreement, the amount shown as the Contingent Amount may not to be used in Program Budgets attached to this Agreement as Appendix A, and is not available to Grantee without a revision to the Program Budgets of Appendix A specifically approved by Grant Agreement Administrator. Grantee further understands that no payment of any portion of this contingency amount will be made unless and until such unless and until such funds are certified as available by Controller. Grantee agrees to fully comply with these laws, regulations, and policies/procedures.

SECTION 16 - COMPLIANCE

Section 16.16 of the agreement currently reads as follows:

16.16 Graffiti Removal.

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti. Grantee shall remove all graffiti from any real property owned or leased by Grantee in the City and County of San Francisco within forty eight (48) hours of the earlier of Grantee's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Grantee to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Grantee to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

Section 16.16 is amended in its entirety to read as follows:

16.16 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 Chapter 12T is available on the web at www.sfgov.org/olse/fco. A partial listing of some of Contractor's obligations under Chapter 12T is set forth in this Section. 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, shall apply only when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco, and 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 or Subcontractor shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(e) Contractor or Subcontractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection 32(d), above. Contractor or Subcontractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(f) Contractor or Subcontractor shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under this Agreement, that the Contractor or Subcontractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(g) Contractor and Subcontractors shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under the Contractor or Subcontractor's control at which work is being done or will be done in furtherance of the performance of this Agreement. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

(h) 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, a penalty of \$50 for a second violation and \$100 for a subsequent violation 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.

APPENDIX B

Appendix B, Work Plan is hereby amended and replaces the previous version used prior to July 1, 2016. See attached revised Appendix B – Work Plan

3. **Effective Date of Modification:** Each of the amendments set forth in Section 2 shall be effective on **July 1, 2016** (date of Controller's certification).
4. **Legal Effect.** City and Grantee hereby agrees that, except as said Agreement is herein modified, all other terms thereof shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Grant Modification on the day and year first above written.

CITY

GRANTEE

Recommended:

Maria Su, Psy.D.
Director
Department of Children, Youth & Their Families

By: 

Approved:

Name of agency: YMCA - Urban Services
Program name: TARC
Address: 1426 Fillmore Street, Suite 204
Address: San Francisco, CA 94115

Grantee's Phone Number: 415-437-1700

Approved as to Form:

Dennis Herrera
City Attorney

By: 

Kathy Murphy
Deputy City Attorney

By: 

Authorized Administrative Rep signature

Admin. Rep. Name: Linda Griffith

Admin. Rep. Title: Vice President of Risk and
Legal Affairs

City Vendor #: 30893

Federal Tax ID #: 94-0997140