

File No. 180359

Committee Item No. 7

Board Item No. 20

### COMMITTEE/BOARD OF SUPERVISORS

#### AGENDA PACKET CONTENTS LIST

Committee: Government Audit and Oversight  
Board of Supervisors Meeting:

Date: June 11, 2018  
Date: June 19, 2018

#### Cmte Board

- Motion
- Resolution
- Ordinance
- Legislative Digest
- Budget and Legislative Analyst Report
- Youth Commission Report
- Introduction Form
- Department/Agency Cover Letter and/or Report
- MOU
- Grant Information Form
- Grant Budget
- Subcontract Budget
- Contract/Agreement
- Form 126 – Ethics Commission
- Award Letter
- Application
- Public Correspondence

#### OTHER

- DRAFT Grant Agreement
- Grant Agreement Appendix A
- Grant Agreement Appendix B
- Human Services Agency Letter - March 27, 2018
- \_\_\_\_\_

Prepared by: John Carroll  
Prepared by: John Carroll

Date: June 7, 2018  
Date: June 11, 2018

1 [Grant Agreement - Brilliant Corners - Scattered Site Housing and Rental Subsidy  
2 Administration Services - Not to Exceed \$16,916,977]

3 **Resolution authorizing the Executive Director of the Human Services Agency to**  
4 **execute a Grant Agreement between the City and County of San Francisco, by and**  
5 **through its Human Services Agency, and the non-profit Brilliant Corners to provide**  
6 **Scattered Site Housing and Rental Subsidy Administration services to seniors and**  
7 **adults with disabilities during the period of July 1, 2018, to June 30, 2023, for a total not**  
8 **to exceed amount of \$16,916,977.**

9  
10 WHEREAS, The Human Services Agency administers the Scattered Site Housing and  
11 Rental Subsidy Administration program to facilitate independent community living for eligible  
12 residents within the City and County of San Francisco; and

13 WHEREAS, Brilliant Corners will provide scattered site housing and rental subsidy  
14 administration for individuals transitioning out of Laguna Honda Hospital or other skilled  
15 nursing facilities and for individuals who are considered at risk of institutionalization; and

16 WHEREAS, Brilliant Corners conducts regular inspections to ensure unit habitability  
17 and the well-being of participants; and

18 WHEREAS, Brilliant Corners serves as a liaison between the landlord and the program  
19 participants including initial occupancy, maintenance and concerns from neighbors; and

20 WHEREAS, Brilliant Corners was selected through a sole source waiver due to being  
21 the only source able to provide these specific services; and

22 WHEREAS, Charter, Section 9.118(b), provides that agreements entered into by a  
23 department requiring expenditures exceeding ten million dollars shall be subject to approval  
24 by the Board of Supervisors; and

1           WHEREAS, The City and County of San Francisco, by and through its Human Services  
2 Agency, wishes to continue providing Scattered Site Housing and Rental Subsidy  
3 Administration services to seniors and adults with disabilities within the City and County of  
4 San Francisco; now, therefore, be it


5           RESOLVED, That the Board of Supervisors hereby authorizes the grant agreement  
6 between the City and County of San Francisco and Brilliant Corners to provide Scattered Site  
7 Housing and Rental Subsidy Administration services to seniors and adults with disabilities  
8 during the period of July 1, 2018, to June 30, 2023, for a total not to exceed amount  
9 of \$16,916,977; and, be it

10          FURTHER RESOLVED, That within 30 days of the Agreement being fully executed by  
11 all parties, the Human Services Agency shall provide a copy to the Clerk of the Board for  
12 inclusion into the official file.

**CITY AND COUNTY OF SAN FRANCISCO  
BOARD OF SUPERVISORS  
BUDGET AND LEGISLATIVE ANALYST**

1390 Market Street, Suite 1150, San Francisco, CA 94102 (415) 552-9292  
FAX (415) 252-0461

June 8, 2018

**TO:** Government Audit and Oversight Committee  
**FROM:** Budget and Legislative Analyst   
**SUBJECT:** June 11, 2018 Government Audit and Oversight Committee Meeting

**TABLE OF CONTENTS**

Item	File	Page
5	18-0525 Authorizing the Acquisition and Conveyance of a Below Market Rate Unit under Foreclosure - 1160 Mission Street, Unit 812.....	1
7	18-0359 Grant Agreement - Brilliant Corners - Scattered Site Housing and Rental Subsidy Administration Services - Not to Exceed \$16,916,977 .....	7

<p><b>Item 5</b> <b>File 18-0525</b></p>	<p><b>Department:</b> Mayor's Office of Housing and Community Development</p>
<p><b>EXECUTIVE SUMMARY</b></p>	
<p style="text-align: center;"><b>Legislative Objectives</b></p>	
<ul style="list-style-type: none"> <li>• The proposed resolution authorizes (1) the acquisition of a below market rate condominium located at 1160 Mission Street, Unit 812, San Francisco for up to \$300,000 to hold the property for resale under the City's Below Market Rate Inclusionary Housing Program; (2) the adoption of findings that the conveyance is consistent with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and (3) the execution of any documents necessary to implement this Resolution.</li> </ul>	
<p style="text-align: center;"><b>Key Points</b></p>	
<ul style="list-style-type: none"> <li>• In August 2017 the City Attorney filed a lawsuit against the owner of a one bedroom one bathroom Below Market Rate (BMR) condominium located in the Soma Grand at 1160 Mission Street, Unit 812. The owner was found to be using the unit as a rental income property in violation of the program requirements.</li> <li>• The first mortgage lender initiated foreclosure proceedings and the trustee sale is scheduled for June 25, 2018.</li> <li>• The owner purchased the property in 2008 at the below market rate price of \$221,698. He paid the down payment with the assistance of a MOHCD DALP loan in the principal amount of \$33,255 to cover 15 percent of the purchase price. The payoff amount now owed to MOHCD includes the equitable share of appreciation, 15percent or \$10,587, for a total \$43,842 owed to MOHCD.</li> <li>• Any property subject to a non-judicial foreclosure must be sold at a public auction. MOHCD cannot facilitate the transfer of the property to a qualified homebuyer at the public auction due to the BMR program requirement that all BMR units be sold through a lottery. As a result, the transfer of the property from the mortgage company's possession to a new owner-occupant requires first a trustee sale, then a MOHCD resale by lottery. Given the unit's restrictions, bidding is unlikely to proceed as at an unrestricted auction.</li> </ul>	
<p style="text-align: center;"><b>Fiscal Impact</b></p>	
<ul style="list-style-type: none"> <li>• If there are no bidders or the property otherwise reverts to the beneficiary (the lender), MOHCD's DALP loan along with all junior liens would be eliminated. If MOHCD acquires the property, the BMR DALP loan will be recovered when MOHCD resells the property through the city lottery process. The up to \$300,000 approved in the proposed resolution would allow MOHCD to acquire the property at public auction and to hold it for resale.</li> </ul>	
<p style="text-align: center;"><b>Recommendation</b></p>	
<ul style="list-style-type: none"> <li>• Approve the proposed resolution.</li> </ul>	

**MANDATE STATEMENT**

Administrative Code Section 23.1 requires Board of Supervisors approval of all resolutions and ordinances approving real property transactions.

**BACKGROUND****Unit 812 at the Soma Grand**

In August 2017 the City Attorney filed a lawsuit against the owner of a one bedroom one bathroom Below Market Rate (BMR) condominium located in the Soma Grand at 1160 Mission Street, Unit 812. The owner was found to be using the unit as a rental income property in violation of the program requirements and lawful and fair business practices. The City filed a Complaint against the owner citing 1) violations of the San Francisco Planning Code, 2) the Notice of Special Restrictions signed with the title to the property, and 3) the Unfair Competition Law. As of December 2017, when a default judgment was entered against the owner, the owner was ordered to comply with the restrictions of the BMR program or sell the property.

At roughly the same time, the Soma Grand Homeowners Association (HOA) issued a notice of default to the owner for his failure to pay HOA dues. While the City's lawsuit was pending, JPMorgan Chase, who held the First Deed of Trust on the property began the foreclosure process due to failure to make mortgage payments. As of JPMorgan's first Notice of Default in June 2017, the owner was behind in payments by \$11,532. After JPMorgan issued a notice of default but before initiating a trustee sale, they sold their interest in the Deed of Trust to Selene Finance, a Texas-based residential mortgage company. Selene Finance continued foreclosure proceedings and the trustee sale is scheduled for June 25, 2018.

**Below Market Rate Inclusionary Housing Program**

The property was designated as Below Market Rate by the San Francisco Planning Commission in December of 2003 under the City's BMR Inclusionary Housing Program. The BMR Program, administered by the Mayor's Office of Housing and Community Development (MOHCD), requires housing developers to set aside a percentage of units in new housing projects larger than 9 units<sup>1</sup>. The set aside units must be rented or sold at a below market rate and must remain affordable to qualifying households for the life of the project, pursuant to Planning Code Section 415. A Notice of Special Restrictions specifies income levels and conditions of the BMR program that go with the land and must be agreed to by all buyers. Chief among the conditions, purchasers of BMR units must (1) reside in the BMR unit as a primary residence and (2) refrain from renting out the BMR unit, without the written consent of MOHCD. The owner of unit 812 breached both conditions.

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<sup>1</sup> Alternative options available to developers are to reserve a percentage of units in another residential project they build, pay a fee, or, in some cases, dedicate land that will become affordable housing.

### Below Market Rate Down Payment Assistance Program

Separate and in addition to the inclusionary housing requirement, MOHCD operates a program called the Below Market Rate Down Payment Assistance Loan Program (BMR-DALP), which provides down payment assistance for the purchase of below market rate units. The BMR-DALP is a subordinated loan that requires no monthly payments for 30 years. In addition to the principal amount owed at the end of the 30 year term, MOHCD is entitled to a share of the property appreciation equal to the proportion of the down payment supported by the BMR-DALP loan. To qualify residents must be first time home buyers, must live in the property as their primary residence, and must meet moderate or low income requirements. The owner of unit 812 at the Soma Grand was a recipient of a BMR-DALP loan in 2008.

### DETAILS OF PROPOSED LEGISLATION

The proposed resolution would

- (1) approve and authorize the acquisition of a below market rate condominium located at 1160 Mission Street, Unit 812, San Francisco for up to \$300,000 to hold the Property for resale under the City's Below Market Rate Inclusionary Housing Program;
- (2) adopt findings that the conveyance is consistent with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and
- (3) authorize and direct the execution of any documents necessary to implement this Resolution.

### AMI-Based Valuation

An appraisal of the property is not required pursuant to the Notice of Special Restrictions under the Planning Code recorded against the title of the property in 2006. Rather BMR property valuation is calculated based on the Area Median Income (AMI) in place the year the purchase is made. When the City or a third party purchases the unit at foreclosure, the transaction is treated as a new sale<sup>2</sup>. Households who pay more than 33 percent of their income for housing are considered to be housing cost-burdened, so MOHCD structures the pricing to ensure owners pay no more than one third of their income towards housing payments.

Using the 2018 annual income limit at 100 percent of AMI<sup>3</sup> for a two-person household<sup>4</sup>, \$94,700, one third of the annual income, \$31,251, is used as the basis to calculate the mortgage the household could support inclusive of condo fees, taxes, and insurance. The maximum BMR sale price is \$348,799, as summarized in Table 1.

<sup>2</sup> The MOHCD price calculation method for a BMR sale by owner generates a lower sales price as the calculation relies on income limits in place the year the purchase was made.

<sup>3</sup> Unadjusted Annual Income Limits, established by the United States Department of Housing and Urban Development

<sup>4</sup> MOHCD prices new sale BMR Units based on the income level for a Household that is one person larger than the total number of bedrooms in the Unit in all cases except for studio BMR Units, which assume a one-person Household, and SRO Units, which are priced based on three-fourths (3/4) of the price for studio.

**Table 1. Maximum Sales Price Calculation for 2 Person Household**

<b>Household Size</b>	<b>Annual</b>	<b>Monthly</b>
2018 Area Median Income (AMI)	\$94,700	
Housing cost share of income (33%)	<u>X 0.33</u>	
Income available for housing costs	\$31,251	\$2,604
Less, annual Homeowner Association (HOA) fee	(8,496)	(708)
Less, property taxes @ 1.1792%	<u>(4,113)</u>	<u>(342)</u>
Annual income available for mortgage payments	\$18,642	\$1,554
10 Year Average Interest Rate*	4.3%	
Supportable Mortgage	\$313,919	
Down Payment	\$34,880	
<b>Initial Affordable Price</b>	<b>\$348,799</b>	

\*Freddie Mac 10-year rolling average

MOHCD is willing to pay no more than \$300,000 for the purpose of the public auction. The City will incur seller transaction costs such as broker commissions, title insurance, inspections, and other seller fees or costs when they sell the unit in the lottery process. Another consideration is the unknown condition of the unit, which may affect the final BMR price. With \$300,000 the City is likely to be able to absorb additional costs and possible changes to the final BMR price. A third party that bids more than \$300,000 would bear the seller transaction fees mentioned above, but cannot sell the unit for more than the maximum sale price of \$348,799.

#### **Loan repayment**

The owner purchased the property directly from the developer in 2008 at the below market rate price of \$221,698. He paid the down payment with the assistance of a BMR-DALP loan in the principal amount of \$33,255 to cover 15 percent of the purchase price. The payoff amount owed to MOHCD includes the principal amount of the BMR-DALP loan, \$33,255, plus the equitable share of appreciation, in this case 15 percent or \$10,587, for a total \$43,842 owed to MOHCD. Based on mortgage payments made by the owner to date, the first mortgage lender, Selene Finance, is owed the loan balance of \$167,656. In the event the unit is sold for the maximum BMR sale price and all liens are paid off, remaining proceeds are \$82,325. Table 2 shows estimated uses in the event that the unit sells for the maximum affordable price.



**Table 2. Estimated Sources and Uses**

<b>Estimated Sources</b>	
Maximum BMR Sale Price	348,799
<b>Uses</b>	
1st loan payoff	167,656
BMR DALP payoff	43,842
HOA Delinquency (as of 6/4/17)	35,355
Est. Closing Costs (including commission)	19,621
<b>Total</b>	<b>266,474</b>
Proceeds to Seller	82,325

In April 2018, the City Attorney’s Office obtained a Default Judgment of \$210,000 against the owner for civil penalties, attorneys’ fees, and costs related to violations of the Planning Code and unfair business practices. The proceeds of \$82,325 shown in Table 2 above will be applied to the Default Judgment.

**Trustee Sale**

Pursuant to California Civil Code, any property subject to a non-judicial foreclosure must be sold at a public auction. MOHCD cannot facilitate the transfer of the property to a qualified homebuyer at the public auction due to the BMR program requirement that all BMR units be sold through a lottery. As a result, the transfer of the property from the mortgage company’s possession to a new owner-occupant requires multiple steps: a bank sale by auction, then a MOHCD resale by lottery.

According to MOHCD’s Homeownership & Below Market Rate Compliance Manager, Ms. Cissy Yin, MOHCD staff will announce the affordability restrictions placed on the BMR unit at the public auction, so that the price restrictions and the resale price of the unit is understood in advance of bidding. As the unit cannot be sold for more than \$348,799, due to its permanent affordability restriction, it is unlikely to be purchased for more than that amount. MOHCD is willing to bid no more than \$300,000. In the event that a third party bids more than \$300,000 at the trustee sale, MOHCD has the legal right to require the third party to sell it back to MOHCD immediately in order to sell the property through the standard lottery process<sup>5</sup>. In brief, the trustee sale is a legal requirement, but given the unit’s restrictions, bidding is unlikely to proceed as at an unrestricted auction.

**FISCAL IMPACT**

MOHCD has a vested interest in the repayment of its DALP loan. Whoever purchases the property at the public auction takes the title subject to the existing liens and restrictions. If the winning bid is in any amount higher than the first mortgage loan balance of \$167,656, all

<sup>5</sup> MOHCD could also require the third party winning bidder to sell the unit directly to a qualified homebuyer selected through a MOHCD-administered lottery at the BMR maximum sale price, but not sell the unit to MOHCD. This will reduce transaction costs and time.

surplus funds will be made available for the remaining beneficiaries to claim based on their lien position. Lien positions are outlined below in Table 3.

**Table 3. Lien Priority**

<b>Position</b>	<b>Lien</b>	<b>Amount</b>
First	Selene Finance loan payoff	\$167,656
Second	BMR lien	No cash value
Third	MOHCD BMR DALP	\$43,842
Fourth	Homeowner Association dues	\$35,355
Fifth	City Attorney Judgement	\$210,000

MOHCD is requesting authorization to bid up to \$300,000 for the BMR unit, because, in the event that the auction of the units does not receive bids (in the absence of MOHCD bidding), the unit would revert to the lender (Selene Finance), and MOHCD's BMR-DALP loan along with all junior liens would be eliminated. If MOHCD acquires the property, the BMR-DALP loan will be repaid when MOHCD resells the property through the City lottery process.

**RECOMMENDATION**

Approve the resolution.

<p><b>Item 7</b> <b>File 18-0359</b></p>	<p><b>Department:</b> Human Services Agency (HSA)</p>
<p><b>EXECUTIVE SUMMARY</b></p>	
<p style="text-align: center;"><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>• The proposed resolution would approve the grant agreement between the Human Services Agency (HSA), and the non-profit Brilliant Corners to provide Scattered Site Housing and Rental Subsidy Administration (SSHRSA) services to seniors and adults with disabilities for the five-year period from July 1, 2018, through June 30, 2023, for a total not to exceed amount of \$16,916,977. The proposed grant agreement does not include any extension options.</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>• The Human Services Agency (HSA) provides Scattered Site Housing and Rental Subsidy Administration (SSHRSA) services to seniors and adults with disabilities within the City and County of San Francisco. Funded by the Community Living Fund administered through HSA’s Department of Aging and Adult Services (DAAS), the SSHRSA program aims to facilitate independent community living for eligible residents within the City. Services include rental unit identification and acquisition, rental subsidy administration, tenant-landlord liaison services, housing retention services, unit habitability, tenant well-being inspections, and management of unit modifications for reasonable accommodations.</li> <li>• According to HSA, the non-profit Brilliant Corners was chosen again as the SSHRSA provider for the proposed grant agreement through sole source rather than a competitive bidding process because the organization is currently the only San Francisco provider of scattered site housing for seniors and adults with disabilities. In addition, Brilliant Corners currently holds the master leases of all units inhabited by the program participants and the leases are not transferable.</li> </ul> <p style="text-align: center;"><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>• The proposed resolution would approve the grant agreement between HSA and Brilliant Corners for a total not-to-exceed amount of \$16,916,977, including a 10 percent contingency of \$1,537,907. The grant is fully funded by the Community Living Fund, which receives General Fund monies.</li> <li>• The proposed budget was developed by Brilliant Corners in collaboration with HSA program staff. The current contract’s annual amount is \$3,038,086, while the proposed agreement’s annual amount is \$3,075,814. The majority of the funding is allocated for rental subsidies, while the other budgeted items are dependent on factors such as changes in rent, fair market value, client income etc. Consequently, the amounts in these categories may vary year-to-year depending on these factors and other operational issues.</li> </ul> <p style="text-align: center;"><b>Recommendation</b></p> <ul style="list-style-type: none"> <li>• Approve the proposed resolution.</li> </ul>	

**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**

The Human Services Agency (HSA) provides Scattered Site Housing and Rental Subsidy Administration (SSHRSA) services to seniors and adults with disabilities within the City and County of San Francisco. Funded by the Community Living Fund<sup>1</sup> administered through HSA's Department of Aging and Adult Services (DAAS), the SSHRSA program aims to facilitate independent community living for eligible residents within the City. Services include rental unit identification and acquisition, rental subsidy administration, tenant-landlord liaison services, housing retention services, unit habitability, tenant well-being inspections, and management of unit modifications for reasonable accommodations. SSHRSA provides housing options for individuals in skilled nursing facilities in San Francisco, including Laguna Honda Hospital and Zuckerberg San Francisco General Hospital, or individuals who are at imminent risk for nursing home or institutional placement but are willing and able to live in the community with appropriate support.

In July 2013, the Board of Supervisors approved a resolution authorizing the third amendment to the contract between Department of Public Health (DPH) and the West Bay Housing Corporation (now known as Brilliant Corners) to (1) extend the term retroactively from July 1, 2013 through June 30, 2018 and (2) increase the total contract amount by \$16,480,867 from \$9,569,430 to \$26,050,297 (File 13-0512). The purpose of the contract was to provide SSHRSA services. According to Ms. Rocio Duenas, HSA Contract Manager, the contract was transferred to HSA because the target population is more aligned with the agency's services and purpose.

**DETAILS OF PROPOSED LEGISLATION**

The proposed resolution would approve a new grant agreement between the Human Services Agency (HSA), and the non-profit Brilliant Corners to provide Scattered Site Housing and Rental Subsidy Administration (SSHRSA) services to seniors and adults with disabilities for the five-year period from July 1, 2018, through June 30, 2023, for a total not to exceed amount of \$16,916,977. The proposed grant agreement does not include any extension options.

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<sup>1</sup> The San Francisco Administrative Code, Section 10.100-12, created the Community Living Fund (CLF) to support aging in place and community placement alternatives for individuals who may otherwise require care within an institution. The CLF provides for home and community-based services, or a combination of equipment and services, that will help individuals who are currently, or at risk of being, institutionalized to continue living independently in their homes, or to return to community living. This is the source of funding for the entire term of the contract.

### **Sole Source Agreement**

According to Ms. Duenas, the non-profit Brilliant Corners was chosen again as the SSHRSA provider for the proposed grant agreement through sole source rather than a competitive solicitation process because the organization is currently the only San Francisco provider of scattered site housing for seniors and adults with disabilities. In addition, Brilliant Corners currently holds the master leases of all units inhabited by the program participants and the leases are not transferable. Ms. Duenas states that the master lease model allows the program to maintain a pool of housing placements for this population. Because of the master leases, changing contractors would likely result in disruptions and displacements for clients, as well as possible loss of units and a decrease in the available housing pool.

The Human Services Agency conducts an internal determination of sole source grant agreements to non-profit organizations, subject to Human Services Commission or the Department of Adult and Aging Services Commission approval<sup>2</sup>. The Human Services Agency uses the same criteria as the City's Office of Contract Administration to award sole source agreements, including (a) goods and services are only available through one source, (b) only one prospective vendor is willing to contract with the City; and (c) the goods or services are licensed or patented to a single vendor. The Department of Adult and Aging Services Commission approved the award of the sole source grant agreement to Brilliant Corners on March 7, 2018.

### **Grant Agreement Services**

As part of the proposed grant agreement, Brilliant Corners will provide scattered site housing and rental subsidy administration through HSA's Department of Aging and Adult Services. The program's goal is to provide rapid re-housing and community integration for the individuals being transitioned out of Laguna Honda and other skilled nursing facilities<sup>3</sup> who are considered at risk of institutionalization. Brilliant Corners currently provides subsidies for 102 participants and has served 108 participants thus far in FY 2017-18. Brilliant Corners transitioned nine new individuals from facilities to the community and is anticipating five additional move-ins. Under the new grant agreement, Brilliant Corners will conduct regular inspections to ensure unit habitability and the well-being of participants. As the master lease holder, Brilliant Corners will also serve as a liaison between the landlord and the program participants including initial occupancy, lease violations, and overall maintenance and concerns. According to Ms. Duenas, the proposed grant agreement will allow eligible, low-income, and at-risk individuals who are willing and able to living in the community an opportunity to do so while freeing up limited institution beds for those who need it.

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<sup>2</sup> While Administrative Code Chapter 21 requires sole source goods and services to be made in accordance with the Director of the Office of Contract Administration's regulations, Section 21.02 states that grants to nonprofit organizations to provide community services are not covered by Chapter 21.

<sup>3</sup> Referrals were accepted from the following Skilled Nursing Facilities: Central Gardens, Tunnell Center, Kindred Golden Gate, California Pacific Medical Center (CPMC) Davies, Zuckerberg San Francisco General Hospital Unit 4A

**FISCAL IMPACT**

The proposed resolution would approve the grant agreement between HSA and Brilliant Corners for a total not-to-exceed amount of \$16,916,977, including a 10 percent contingency<sup>4</sup> of \$1,537,907, as shown in Table 1 below. The grant is fully funded by the Community Living Fund, which receives General Fund monies.

**Table 1: Brilliant Corners Proposed Grant Budget from FY18-19 through FY22-23**

Expenditures	FY18-19	FY19-20	FY20-21	FY21-22	FY22-23	Total
Salaries and Benefits	\$348,641	\$348,641	\$348,641	\$348,641	\$348,641	\$1,743,204
Operating Expenses	159,089	101,638	101,003	100,508	99,813	562,052
Indirect Cost (15 %) <sup>5</sup>	76,159	67,542	67,447	67,372	67,268	345,788
Client Pass Through <sup>6</sup>	2,491,925	2,557,993	2,558,723	2,559,293	2,560,092	12,728,026
<b>Subtotal</b>	<b>\$3,075,814</b>	<b>\$3,075,814</b>	<b>\$3,075,814</b>	<b>\$3,075,814</b>	<b>\$3,075,814</b>	<b>\$15,379,070</b>
Contingency (10%)						1,537,907
<b>Total</b>						<b>\$16,916,977</b>

According to Ms. Duenas, the proposed budget was developed by Brilliant Corners in collaboration with HSA program staff. The current contract’s annual amount is \$3,038,086, while the proposed agreement’s annual amount is \$3,075,814. The majority of the funding is allocated for rental subsidies, while the other budgeted items are dependent on factors such as changes in rent, fair market value, client income etc. Consequently, the amounts in these categories may vary year-to-year depending on these factors and other operational issues.

**RECOMMENDATION**

Approve the proposed resolution.

<sup>4</sup> According to Ms. Duenas, the 10 percent contingency is allocated only if and when there is a need for the funds and must be preapproved by the department.

<sup>5</sup> According to HSA, indirect costs are organizational costs that cannot be isolated to an individual program or contract. The agency allows contractors to allocate indirect costs as an additive of direct costs not to exceed 15 percent of direct costs.

<sup>6</sup> Direct Client Pass Through expenditures are funds that are paid directly by the contractor on behalf of clients of the program. This includes rental subsidy payments and client utility payments. These funds are not included in the indirect calculation.

**CITY AND COUNTY OF SAN FRANCISCO  
HUMAN SERVICES AGENCY**

**GRANT AGREEMENT**

between

CITY AND COUNTY OF SAN FRANCISCO

and

**BRILLIANT CORNERS**

**THIS GRANT AGREEMENT** (this "Agreement") is made this 1<sup>st</sup> day of **July, 2018**, in the City and County of San Francisco, State of California, by and between **Brilliant Corners, 1390 Market Street, Suite 405, San Francisco CA 94102** ("Grantee") and the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation ("City") acting by and through the Agency (as hereinafter defined),

**WITNESSETH:**

**WHEREAS**, Grantee has submitted to the Agency the Application Documents (as hereinafter defined), for the purpose of funding the matters set forth in the Grant Plan (as hereinafter defined) and summarized briefly as follows:

**To administer the Scattered Site Housing and Rental Subsidy Administration (SSHRSA) program to facilitate independent community living for eligible residents within the City and County of San Francisco; and**

**WHEREAS**, City desires to provide such a grant on the terms and conditions set forth herein:

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

**ARTICLE 1  
DEFINITIONS**

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

(a) "**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.

(b) "**Agency**" shall mean Human Services Agency or Department of Human Services

(c) "**Application Documents**" shall mean collectively: (i) the grant application submitted by Grantee, including all exhibits, schedules, appendices and attachments thereto; (ii) all documents,

Brilliant Corners  
SSH/RSA FY18-23  
G-100H (9-15; HSA)

1 of 32

July 2018

correspondence and other written materials submitted in respect of such grant application; and (iii) all amendments, modifications or supplements to any of the foregoing approved in writing by City.

(d) **"Budget"** shall mean either the budget attached hereto as part of Appendix B, if any, or the budget included in the Application Documents, to the extent expressly approved by the Agency.

(e) **"Charter"** shall mean the Charter of City.

(f) **"Controller"** shall mean the Controller of City.

(g) **"Eligible Expenses"** shall have the meaning set forth in Appendix A.

(h) **"Event of Default"** shall have the meaning set forth in Section 11.1.

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

(j) **"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.

(k) **"Funding Request"** shall have the meaning set forth in Section 5.3(a).

(l) **"Grant Funds"** shall mean any and all funds allocated or disbursed to Grantee under this Agreement.

(m) **"Grant Plan"** shall have the meaning set forth in Appendices A and B, or shall mean the plans, performances, events, exhibitions, acquisitions or other activities or matter described in the Application documents; provided, however, that in the event of any inconsistency in such description, the most recent of the conflicting documents shall govern.

(n) **"HRC"** shall mean the Human Rights Commission of City, or, in light of legal changes in the governing structure, shall mean **"CMD"** or the Contract Monitoring Division of the City.

(o) **"Indemnified Parties"** shall mean: (i) City, including the Agency 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.

(p) **"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.

(q) **"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 Grant Plan or is paid for in whole or in part using Grant Funds.

(r) **"Contractor"** shall mean "Grantee" as certain City Contracting requirements also apply to Grants of the City of San Francisco.



**1.2 Additional Terms.** The terms “as directed,” “as required” or “as permitted” and similar terms shall refer to the direction, requirement, or permission of the Agency. The terms “sufficient,” “necessary” or “proper” and similar terms shall mean sufficient, necessary or proper in the sole judgment of the Agency. The terms “approval,” “acceptable” or “satisfactory” or similar terms shall mean approved by, or acceptable to, or satisfactory to the Agency. 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 13.

**1.3 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 17.2. 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**

**2.1 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.

**2.2 Certification of Controller; Guaranteed Maximum Costs.** No funds shall be available under this Agreement until prior written authorization certified by the Controller. In addition, as set forth in Section 21.19 of the San Francisco Administrative Code: City's obligations hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. 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 that are provided by Grantee which are beyond the scope of the services, materials, equipment and supplies agreed upon herein and which were not approved by a written amendment to this Agreement having been lawfully executed by City. City and its employees and officers are not authorized to offer or promise to Grantee additional funding for this Agreement which 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. 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.

**2.3 Automatic Termination for Nonappropriation of Funds.** This Agreement shall automatically terminate, without penalty, liability or expense of any kind to City, at the end of any Fiscal Year if funds are not appropriated for the next succeeding Fiscal Year. If funds are appropriated for a portion of any Fiscal Year, this Agreement shall terminate, without penalty, liability or expense of any kind to City, at the end of such portion of the Fiscal Year.

**2.4 SUPERSEDURE 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.

### ARTICLE 3 TERM

**3.1 Effective Date.** This Agreement shall become effective when the Controller has certified to the availability of funds as set forth in Section 2.2 and the Agency has notified Grantee thereof in writing.

**3.2 Duration of Term.** The term of this Agreement shall commence on the later of (a) July 1, 2018 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, 2023.

### ARTICLE 4 IMPLEMENTATION OF GRANT PLAN

**4.1 Implementation of Grant Plan; Cooperation with Monitoring.** Grantee shall, in good faith and with diligence, implement the Grant Plan on the terms and conditions set forth in this Agreement and the Application Documents. Grantee shall not materially change the nature or scope of the Grant Plan during the term of this Agreement without the prior written consent of City. Grantee shall promptly comply with all standards, specifications and formats of City, as they may from time to time exist, related to evaluation, planning and monitoring of the Grant Plan and shall cooperate in good faith with City in any evaluation, planning or monitoring activities conducted or authorized by City.

**4.2 Grantee's Personnel.** The Grant Plan shall be implemented only by competent personnel under the direction and supervision of Grantee.

**4.3 Grantee's Board of Directors.** Grantee shall at all times be governed by a legally constituted and fiscally responsible board of directors. 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. 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.

**4.4 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 Grant Plan 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 subsection (a) above, Grantee shall submit to City for City's prior written approval any Publication, and Grantee shall not disseminate any such Publication 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 Grant Plan, and Grantee shall promptly provide to City one copy of all such materials or forms within two (2) days following City's request. The City's approval of any material hereunder shall not be deemed an endorsement of, or agreement with, the contents of such material, and the City shall have no liability or responsibility for any such contents. The City reserves the right to disapprove any material covered by this section at any time, notwithstanding a prior approval by the City of such material. Grantee shall not charge for the use or distribution of any Publication 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 solely within San Francisco, unless 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; undermines the purpose of the Grant Plan; discourages otherwise qualified potential employees or volunteers or any clients from participating in activities covered under the Grant Plan; 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 Grant Plan 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 Grant Plan, or causing such element of the Grant Plan to be performed, consistent with the terms and conditions of this Agreement.

(f) Grantee shall acknowledge City's funding under this Agreement in all Publications. Such acknowledgment shall conspicuously state that the activities are sponsored in whole or in part through a grant from the Agency. Except as set forth in this Section, Grantee shall not use the name of the Agency or City (as a reference to the municipal corporation as opposed to location) in any Publication without prior written approval of City.

**ARTICLE 5  
USE AND DISBURSEMENT OF GRANT FUNDS**

**5.1 Maximum Amount of Grant funds.**

The amount of the Grant Funds disbursed hereunder shall not exceed Fifteen Million, Three Hundred Seventy Nine Thousand, Seventy Dollars (\$15,379,070) for the period from July 1, 2018 to June 30, 2023, plus any contingent amount authorized by City and certified as available by the Controller.

Contingent amount: Up to One Million, Five Hundred Thirty Seven Thousand, Nine Hundred Seven Dollars (\$1,537,907) for the period from July 1, 2022 to June 30, 2023 (Y5), may be available, in the City's sole discretion as a contingency but only subject to written authorization by the City and if monies are certified as available by the Controller.

The maximum amount of Grant Funds disbursed hereunder shall not exceed Sixteen Million, Nine Hundred Sixteen Thousand, Nine Hundred Seventy Seven Dollars (\$16,916,977) for the period from July 1, 2018 to June 30, 2017 (Y1-Y3).

Grantee understands that the maximum amount of Grant Funds disbursement identified above in Section 5.1 of this Agreement, includes the amount shown as the contingent amount and may not be used in Program Budget(s) attached to this Agreement as Appendix B, and is not available to Grantee without a written revision to the Program Budgets of Appendix B approved by Agency. Grantee further understands that no payment of any portion of this contingency amount will be made unless and until such funds are certified as available by Controller. Grantee agrees to fully comply with these laws, regulations, and policies and procedures.

**5.2 Use of Grant Funds.** Grantee shall use the Grant Funds only for Eligible Expenses as set forth in Appendix A, Appendix B and defined as eligible expenses in 2 CFR Part 200 Subpart E, Cost Principles, if the source of funding for this program is Federal, and for no other purpose. Grantee shall expend the Grant Funds in accordance with the Budget, if any, and shall obtain the prior approval of City before transferring expenditures from one line item to another within the Budget.

**5.3 Disbursement Procedures.** Grant Funds shall be disbursed to Grantee as follows:

(a) Grantee shall submit to the Agency, in the manner specified for notices pursuant to Article 15, a document (a "Funding Request") substantially in the form attached as Appendix C. Any Funding Request that is submitted and is not approved by the Agency shall be returned by the Agency to Grantee with a brief statement of the reason for the Agency's rejection of such Funding Request. If any such rejection relates only to a portion of Eligible Expenses itemized in such Funding Request, the Agency shall have no obligation to disburse any Grant Funds for any other Eligible Expenses itemized in such Funding Request unless and until Grantee submits a Funding Request that is in all respects acceptable to the Agency.

(b) The Agency shall make all disbursements of Grant Funds pursuant to this Section by check payable to Grantee, sent via U.S. mail or by Automated Clearing House (ACH) payments authorized by the City Controller's Office in accordance with Article 15, unless the Agency otherwise agrees in writing, in its sole discretion. The Agency shall make disbursements of Grant Funds no more than once during each month for the term of the grant.

#### 5.4 State or Federal Funds:

(a) Disallowance. With respect to Grant Funds, if any, which are ultimately provided by the state or federal government, Grantee agrees that if Grantee claims or receives payment from City for an Eligible Expense, payment or reimbursement of which is later disallowed by the state or federal government, Grantee shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Grantee under this Agreement or any other Agreement. Any such offset with respect to a portion of the disallowed amount shall not release Grantee from Grantee's obligation hereunder to refund the remainder of the disallowed amount.

(b) Single Audit Requirements. Grantees that expend \$750,000 or more in a fiscal year that began after December 26, 2014 from any and all Federal awards shall have a single audit conducted in each of those fiscal years accordance with 2 CFR Part 200 Subpart F. Grantees that expend less than \$750,000 a year in Federal awards are exempt from the single audit requirements for that year, but records must be available for review or audit by appropriate officials of the Federal Agency, pass-through entity and General Accounting Office, and are still subject to other audit requirements as specified in 2 CFR Subpart F §200.501

### ARTICLE 6 REPORTING REQUIREMENTS; AUDITS; PENALTIES FOR FALSE CLAIMS

**6.1 Regular Reports.** Grantee shall provide, in a prompt and timely manner, financial, operational and other reports, as requested by the Agency, in form and substance satisfactory to the Agency. Such reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages, to the maximum extent possible.

**6.2 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 8.1.

**6.3 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 8 to be false or misleading at any time during the term of this Agreement.

**6.4 Financial Statements.** Within sixty (60) days following the end of each Fiscal Year, Grantee shall deliver to City an unaudited balance sheet and the related statement of income and cash flows for such Fiscal Year, all in reasonable detail acceptable to City, certified by an appropriate financial officer of Grantee as accurately presenting the financial position of Grantee. If requested by City, Grantee shall also deliver to City, no later than one hundred twenty (120) days following the end of any Fiscal Year, an audited balance sheet and the related statement of income and cash flows for such Fiscal Year, certified by a reputable accounting firm as accurately presenting the financial position of Grantee, and in compliance with 2 CFR Part 200 Subpart F, as applicable.

**6.5 Books and Records.** Grantee shall establish and maintain accurate files and records of all aspects of the Grant Plan and the matters funded in whole or in part with Grant Funds during the term of this Agreement. Without limiting the scope of the foregoing, Grantee shall establish and maintain accurate financial books and accounting records relating to Eligible Expenses incurred and Grant Funds received

and expended under this Agreement, together with all invoices, documents, payrolls, time records and other data related to the matters covered by this Agreement, whether funded in whole or in part with Grant Funds. Grantee shall maintain all of the files, records, books, invoices, documents, payrolls and other data required to be maintained under this Section in a readily accessible location and condition for a period of not less than five (5) years after final payment under this Agreement or until any final audit has been fully completed, whichever is later.

**6.6 Inspection and Audit.** Grantee shall make available to City, its employees and authorized representatives, and its Federal and State funders, 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 6.5. 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 6.

**6.7 Submitting False Claims; Monetary Penalties.** Any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to 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.

**6.8 Ownership of Results.** Any interest of Grantee or any subgrantee, in drawings, plans, specifications, studies, reports, memoranda, computation sheets, the contents of computer diskettes, or other documents or Publications prepared by Grantee or any subgrantee in connection with this Agreement or the implementation of the Grant Plan or the services to be performed under this Agreement, shall become the property of and be promptly transmitted to City. Notwithstanding the foregoing, Grantee may retain and use copies for reference and as documentation of its experience and capabilities.

**6.9 Works for Hire.** If, in connection with this Agreement or the implementation of the Grant Plan, Grantee or any subgrantee 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 subgrantees or other persons or entities implementing the Grant Plan to ensure that City obtains the rights set forth in this Article 6.

**ARTICLE 7  
TAXES**

**7.1 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 Grant Plan, the Grant Funds or any of the activities contemplated by this Agreement.

**7.2 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.

**7.3. Earned Income Credit (EIC) Forms. Reserved**

**ARTICLE 8  
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:

**8.1 Organization; Authorization.** Grantee is a nonprofit corporation, 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.

**8.2 Location.** Grantee's operations, offices and headquarters are located at the address for notices set forth in Section 15. All aspects of the Grant Plan will be implemented at the geographic location(s), if any, specified in the Grant Plan.

**8.3 No Misstatements.** No document furnished or to be furnished by Grantee to City or City in connection with the Application Documents, 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.

#### **8.4 Conflict of Interest.**

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

(b) Not more than one member of an immediate family serves or will serve as an officer, director or employee of Grantee, without the prior written consent of City. For purposes of this subsection, "immediate family" shall include husband, wife, domestic partners, brothers, sisters, children and parents (both legal parents and step-parents).

**8.5 No Other Agreements with City.** Except as expressly itemized in Appendix D, 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.

**8.6 Subcontracts.** Except as may be permitted under Section 13.3, 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 Grant Plan.

**8.7 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 9 INDEMNIFICATION AND GENERAL LIABILITY**

**9.1 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 7; 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.



**9.2 Duty to Defend; Notice of Loss.** Grantee acknowledges and agrees that its obligation to defend the Indemnified Parties under Section 9.1: (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 9.1, 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 9.1 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 9.1, 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.

**9.3 Incidental and Consequential Damages.** Losses covered under this Article 9 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.

**9.4 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 GRANT 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 GRANT PLAN OR ANY ACTIVITIES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

## **ARTICLE 10 INSURANCE**

**10.1 Types and Amounts of Coverage.** Without limiting Grantee's liability pursuant to Article 9, Grantee shall maintain in force, 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.

(b) Commercial General 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 Contractual Liability, Personal Injury, Products and Completed Operations and

(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.

**10.2 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.

**10.3 Additional Requirements for All Policies.** All policies shall be endorsed to provide at least thirty (30) days' advance written notice to City of cancellation of policy for any reason, nonrenewal or reduction in coverage and specific notice mailed to City's address for notices pursuant to Article 15.

**10.4 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.

**10.5 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.

**10.6 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 satisfactory to 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.

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

**10.8 Insurance for Subcontractors and Evidence of this Insurance.** If a subcontractor will be used to complete any portion of this agreement, the 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 the grantee listed as additional insureds.

**10.9 Regarding Workers' Compensation,** Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

**10.10** Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

## **ARTICLE 11 EVENTS OF DEFAULT AND REMEDIES**

**11.1 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, in any Funding Request 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 10.

(c) **Failure to Comply with Applicable Laws.** Grantee fails to perform or breaches any of the terms or provisions of Article 16.

(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).

(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 Protect Private Information.** Grantee discloses information it is required to protect under Section 12.1.

## 11.2 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 Grantee 30 day written notice of termination. The notice shall specify the date on which termination shall become effective.

b. Upon receipt of the notice, Grantee shall commence and perform, with diligence, all actions necessary on the part of Grantee to effect the termination of this Agreement on the date specified by City and to minimize the liability of Grantee 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 subgrants for materials, services, equipment or other items.

(3) Terminating all existing orders and subgrants.

(4) At City's direction, assigning to City any or all of Grantee's right, title, and interest under the orders and subgrants 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 subgrants.

(5) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subgrants.

(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 Grantee and in which City has or may acquire an interest.

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

(1) The reasonable cost to Grantee, without profit, for all services and other work City directed Grantee 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 Grantee's direct costs for services or other work. Any overhead allowance shall be separately itemized. Grantee 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 Grantee can establish, to the satisfaction of City, that Grantee 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 Grantee 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 Grantee, 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 Grantee or any of its subgrantees 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 Grantee under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Grantee's final invoice; (2) any claim which City may have against Grantee 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.

**11.3 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) **Termination.** City may terminate this Agreement by giving a written termination notice to Grantee and, on the date specified in such notice, this Agreement shall terminate and all rights of Grantee hereunder shall be extinguished. In the event of such termination, Grantee will be paid for Eligible Expenses in any Funding Request that was submitted and approved by City prior to the date of termination specified in such notice.

(b) **Withholding of Grant Funds.** City may withhold all or any portion of Grant Funds not yet disbursed hereunder, regardless of whether Grantee has previously submitted a Funding Request or whether City has approved the disbursement of the Grant Funds requested in any Funding Request. 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.

(c) **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.

(d) **Return of Grant Funds.** City may demand 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.

**11.4 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.

## ARTICLE 12 DISCLOSURE OF INFORMATION AND DOCUMENTS

### 12.1 Protection of Private Information.

**a. Personal Information.** Contractor 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. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of Chapter 12M of the San Francisco Administrative Code shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

**b. Protected Social Service and Personal Health Information.** Contractor, all subgrantees, and all agents and employees of Contractor and any subgrantee shall comply with any and all privacy laws regarding social service recipient information and/or the transmission, storage and protection of all private health information disclosed to Contractor by City in the performance of this Agreement. Contractor agrees that any failure of Contractor to comply with the requirements of federal and/or state and/or local privacy laws shall be a material breach of the Contract. In the event that City pays a regulatory fine, and/or is assessed civil penalties or damages through private rights of action, based on an impermissible use or disclosure of protected social service or protected health information given to Contractor or its subgrantees or agents by City, Contractor shall indemnify City for the amount of such fine or penalties or damages, including costs of notification. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract.

**c. Proprietary and 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.

**12.2 Sunshine Ordinance.** Grantee acknowledges and agrees that this Agreement and the Application Documents are subject to Section 67.24(e) of the San Francisco Administrative Code, which provides that grants, including this Agreement, grantee's bids, responses to Requests for Proposals (RFPs) and all other records of communications between City and persons or entities seeking grants, shall be open to inspection immediately after a grant 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 grant or other benefit until and unless that person or organization is awarded the grant 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.

**12.3 Financial Projections.** Pursuant to San Francisco Administrative Code Section 67.32, Grantee has on or before the date hereof provided to City financial projections, including profit and loss figures, for

the Project. For the term of the Agreement, Grantee shall within one hundred twenty (120) days after the end of Grantee's fiscal year end provide to City annual financial statements for the Project certified by the Grantee as complete and accurate and audited by an independent accounting firm. The Grantee acknowledges and agrees that the financial projections and audited financial statements shall be public records subject to disclosure upon request.

### ARTICLE 13 ASSIGNMENTS AND SUBCONTRACTING

**13.1 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.

**13.2 Agreement Made in Violation of this Article.** Any agreement made in violation of Section 13.1 shall confer no rights on any person or entity and shall automatically be null and void.

**13.3 Subcontracting.** If Appendix E lists any permitted subgrantees, then notwithstanding any other provision of this Agreement to the contrary, Grantee shall have the right to subcontract on the terms set forth in this Section. If Appendix E is blank or specifies that there are no permitted subgrantees then Grantee shall have no rights under this Section.

(a) **Limitations.** In no event shall Grantee subcontract or delegate the whole of the Grant Plan. Grantee may subcontract with any of the permitted subgrantees set forth on Appendix E without the prior consent of City; provided, however, that 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 subgrantees or its agents or employees as fully as if they were the acts, defaults or omissions of Grantee. Grantee shall ensure that its subgrantees comply with all of the terms of this Agreement, insofar as they apply to the subcontracted portion of the Grant Plan. All references herein to duties and obligations of Grantee shall be deemed to pertain also to all subgrantees to the extent applicable. A default by any subcontractor shall be deemed to be an Event of Default hereunder. Nothing contained in this Agreement shall create any contractual relationship between any subgrantee and City.

(b) **Terms of Subcontract.** 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 subgrantee. In addition, each subcontract shall incorporate all of the terms of this Agreement, insofar as they apply to the subcontracted portion of the Grant Plan. Without limiting the scope of the foregoing, each subcontract shall provide City, with respect to the subgrantee 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.

**13.4 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.

**ARTICLE 14**  
**INDEPENDENT CONTRACTOR STATUS**

**14.1 Nature of Agreement.** Grantee shall be deemed at all times to be an independent grantee and is solely responsible for the manner in which Grantee implements the Grant Plan 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.

**14.2 Direction.** Any terms in this Agreement referring to direction or instruction from the Agency 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.

**14.3 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 14.3 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 determine 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 15**  
**NOTICES AND OTHER COMMUNICATIONS**

**15.1 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 facsimile (if a facsimile number is provided below):

If to the Agency or City:           Human Services Agency  
  Office of Contract Management, G- 000  
  P.O. Box 7988  
  San Francisco, CA 94120-7988  
  Facsimile No. 415-557-5679

If to Grantee:                           Brilliant Corners  
  1390 Market Street, Suite 405  
  San Francisco, CA 94102  
  Attn: William Pickel  
  Email: [BPickel@brilliantcorners.org](mailto:BPickel@brilliantcorners.org)

**15.2 Effective Date.** All communications sent in accordance with Section 15.1 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 facsimile, the date of telephonic 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 facsimile machine transmission report of the party giving such notice.

**15.3 Change of Address.** From time to time any party hereto may designate a new address for purposes of this Article 15 by notice to the other party.

**ARTICLE 16**  
**COMPLIANCE**

**16.1 Local Business Enterprise Utilization; Liquidated Damages. Reserved.**

**16.2 Nondiscrimination; 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

subgrantees to comply with such provisions. Grantee's failure to comply with 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 the work is being performed for the City or 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 Grant Agreement.** As a condition to this Agreement, Grantee shall execute the "Chapter 12B Declaration: Nondiscrimination in Grants 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 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 Sections 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.

**16.3 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 corporations 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

**16.4 Tropical Hardwood and Virgin Redwood Ban.** Pursuant to § 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.

**16.5 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.

**16.6 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.

**16.7 Compliance with ADA.** Grantee acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a grantee, must be accessible to the disabled public. Grantee shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Grantee agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Grantee, its employees, agents or assigns will constitute a material breach of this Agreement.

Chapter 21-100 Nondiscrimination in State and Federally Assisted Programs- of the Confidentiality, Fraud, Civil Rights, and State Hearings Manual published by the California Department of Social Services (available online at <http://www.cdss.ca.gov/getinfo/pdf/3cfcman.pdf>) requires that Grantees administer their program(s) in a nondiscriminatory manner and in compliance with civil rights obligations and to accommodate non-English-speaking or limited-English-proficient individuals and individuals with disabilities or impairments. At a minimum, grantees must provide the following:

- Procedures for informing clients of their civil rights under Chapter 21-100;
- Policies and procedures for handling complaints filed with or against a Grantee;
- Policies and procedures that ensure Grantees accommodate individuals with hearing impairments, visual impairments and other disabilities;
- Policies and procedures that ensure that Grantees provide appropriate language services, including a breakdown of bilingual/interpreter staff and a description of how written information is communicated to non-English speaking clients; and
- Policies and procedures for ensuring that Grantee staff are adequately trained in the requirements of Chapter 21 under California Department of Social Services standards.

**16.8. Requiring Minimum Compensation for Covered Employees**

a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco). A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

c. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within

90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

d. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.

e. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor

f. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor 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 the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the grant, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the 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 the City.

h. Contractor 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.

i. If Contractor 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 Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor 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 the Contractor and this department to exceed \$25,000 in the fiscal year.

**16.9 Limitations on Contributions.** Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who grants with the 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, from making any campaign contribution to (1) an individual holding a City elective office if the grant must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (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 grant until the later of either the termination of negotiations for such grant or six months after the date the grant is approved. Contractor acknowledges that the foregoing restriction applies only if the grant or a combination or series of grants approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the grant; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or grant; and any committee that is sponsored or controlled by Contractor. Additionally,

Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Contractor further agrees to provide to City the names of each person, entity or committee described above.

#### **16.10 First Source Hiring Program.**

**a. Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapter 83 of the San Francisco Administrative Code (Chapter 83) are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under Chapter 83, 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 grant or property grant with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the grant or property grant. Contractors 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 maybe certified as meeting the requirements of Chapter 83. 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 Chapter 83.

(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 job 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 Chapter 83. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of grants and property grants 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 grant or property grant has taken actions primarily for the purpose of circumventing the requirements of Chapter 83, that employer shall be subject to the sanctions set forth in Section 83.10 of Chapter 83.

(6) Set the term of the requirements.

(7) Set appropriate enforcement and sanctioning standards consistent with Chapter 83.

(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 Chapter 83.

(9) Require the developer to include notice of the requirements of Chapter 83 in leases, subleases, and other occupancy grants.

**c. Hiring Decisions.** Contractor 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 Chapter 83 would cause economic hardship.

**e. Liquidated Damages.** Contractor 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 grants based on violations of grant provisions required by Chapter 83 as set forth in this section;

(3) That the Contractor's commitment to comply with Chapter 83 is a material element of the City's consideration for this grant; that the failure of the Contractor to comply with the grant provisions required by Chapter 83 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 Chapter 83, 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 grant or at law; and

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 Contractor 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.

**16.11 Prohibition on Political Activity with City Funds.** In accordance with S. F. Administrative Code Chapter 12.G, no funds appropriated by the City and County of San Francisco 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 the City or its designee in order to ensure compliance with this section. In the event Grantee violates the provisions of this section, the 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 grant for a period of two (2) years, and (iii) obtain reimbursement of all funds previously disbursed to Grantee under this Agreement.

**16.12 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.

**16.13 Supervision of Minors.** 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. 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 that was listed in former Penal Code section 11105.3 (h)(1) or 11105.3(h)(3). 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. 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 grant 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.

**16.14 Public Access to Meetings and Records.** If the 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, the Grantee shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the 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 Administrative Code. The 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. The Grantee acknowledges that its material failure to comply with any of the provisions of this



paragraph shall constitute a material breach of this Agreement. The Grantee further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

#### **16.15 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](http://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 Chapter 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 16.15(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.

**16.16 Food Service Waste Reduction Requirements.** Effective June 1, 2007, 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.

**16.17 Sugar-Sweetened Beverage Prohibition.** Contractor agrees that it will 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.

**16.18 Slavery Era Disclosure. Reserved**

**16.19 Compliance with Other Laws.** Without limiting the scope of any of the preceding sections of this Article 16, Grantee shall keep itself fully informed of 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.

**16.20 Services Provided by Attorneys.** Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subgrantees of Grantee, will be paid unless the provider received advance written approval from the City Attorney.

**16.21 Compliance with California Department on Aging.** If grant is in excess of \$100,000 in California Department of Aging Funding, grantee is required to complete and submit of Standard Form. LLL, "Disclosure Form to Report Lobbying", Form LLL to be found at:  
<http://www.adp.ca.gov/NNA/files/Documents1X.doc>

**ARTICLE 17  
MISCELLANEOUS**

**17.1 No Waiver.** No waiver by the Agency or City of any default or breach of this Agreement shall be implied from any failure by the Agency or City to take action on account of such default if such default persists or is repeated. No express waiver by the Agency 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 City or the Agency 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 the Agency 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.

**17.2 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.

**17.3 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 or president, as the case may be, of the Agency who shall decide the true meaning and intent of the Agreement. Such decision shall be final and conclusive.

**17.4 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.

**17.5 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.

**17.6 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, Services to be Provided
- Appendix B, Budget
- Appendix C, Method of Payment
- Appendix D, Interests in Other City Grants
- Appendix E, Permitted Subgrantees
- Appendix F, Additional Terms, HIPAA Compliance
- Appendix G, HIPPA Business Associate Addendum

**17.7 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.

**17.8 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.

**17.9 Successors; No Third-Party Beneficiaries.** Subject to the terms of Article 13, 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 9, 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.

**17.10 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 6.4	Financial Statements.	Article 12	Disclosure of Information and Documents
Section 6.5	Books and Records.		
Section 6.6	Inspection and Audit.	Section 13.4	Grantee Retains Responsibility.
Section 6.7	Submitting False Claims; Monetary Penalties	Section 14.3	Consequences of Recharacterization.
Section 6.8	Ownership of Results.	This Article 17	Miscellaneous
Article 7	Taxes		
Article 9	Indemnification and General Liability		
Section 10.4	Required Post-Expiration Coverage.		

**17.11 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.

**17.12 Dispute Resolution Procedure.** The following Dispute Resolution Procedure provides a process to resolve any disputes or concerns relating to the administration of an awarded professional services grant or grant between the City and County of San Francisco and nonprofit health and human services grantees. Grantees and City staff should first attempt to come to resolution informally through discussion and negotiation with the designated contact person in the department. If informal discussion has failed to resolve the problem, grantees and departments should employ the following steps:

Step 1 The grantee will submit a written statement of the concern or dispute addressed to the Grant/Program Manager who oversees the agreement in question. The writing should describe the nature of the concern or dispute, i.e., program, reporting, monitoring, budget, compliance or other concern. The Grant/Program Manager will investigate the concern with the appropriate department staff that are involved with the nonprofit agency's program, and will either convene a meeting with the grantee or provide a written response to the grantee within 10 working days.

Step 2 Should the dispute or concern remain unresolved after the completion of Step 1, the grantee may request review by the Division or Department Head who supervises the Grant/Program Manager. This request shall be in writing and should describe why the concern is still unresolved and propose a solution that is satisfactory to the grantee. The Division or Department Head will consult with other Department and City staff as appropriate, and will provide a written determination of the resolution to the dispute or concern within 10 working days.

Step 3 Should Steps 1 and 2 above not result in a determination of mutual agreement, the grantee may forward the dispute to the Executive Director of the Department or their designee. This dispute shall be in writing and describe both the nature of the dispute or concern and why the steps taken to date are not satisfactory to the grantee. The Department will respond in writing within 10 working days.

In addition to the above process, grantees have an additional forum available only for disputes that concern implementation of the thirteen policies and procedures recommended by the Nonprofit Granting Task Force and adopted by the Board of Supervisors. These recommendations are designed to improve and streamline granting, invoicing and monitoring procedures. For more information about the Task Force's recommendations, see the June 2003 report at [http://www.sfgov.org/site/npgrantingtf\\_index.asp?id=1270](http://www.sfgov.org/site/npgrantingtf_index.asp?id=1270).

**17.13 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.

**17.14 Services During a City-Declared Emergency.** In case of an emergency that affects the San Francisco Bay Area, Grantee will make a good faith effort to continue to provide services to the Department's clients on a priority basis. Contactor shall provide fair prices for services that may not be covered under the awarded grant but are necessary as a direct result of the City-declared emergency. Grantee will document the expenses incurred and submit a prompt request for payment to the Department.



Appendix D-Interests In Other City Grants

\*\*Subgrantees must also list their interests in other City contracts

City Department or Commission	Date of Grant	Amount of Grant

**Appendix E-Permitted Subcontractors**

**NONE**



**Appendix A – Services to be Provided**  
**Brilliant Corners**  
**Scattered Site Housing and Rental Subsidy Administration (SSHRSA)**  
**July 1, 2018 – June 30, 2023**

**I. Purpose of Grant**

The purpose of this grant is to administer the Scattered Site Housing and Rental Subsidy Administration (SSHRSA) program to facilitate independent community living for eligible residents within the City and County of San Francisco. Services include rental unit identification and acquisition, rental subsidy administration, tenant-landlord liaison services, housing retention services, unit habitability, and tenant well-being inspections, and management of unit modifications for reasonable accommodations. This grant is funded under the Community Living Fund administered through the Department of Aging and Adult Services (DAAS).

**II. Definitions**

CARBON	Contracts Administration, Reporting and Billing On Line System
City	City and County of San Francisco
CLF	Community Living Fund, created by the San Francisco Administrative Code, Section 10.100-12, to support aging in place and community placement alternatives for individuals who may otherwise require care within an institution.
Grantee	Brilliant Corners, a provider of scattered site housing and rental subsidy services
DAAS	Department of Aging and Adult Services
HSA	San Francisco Human Services Agency
HUD	U.S. Department of Housing and Urban Development
IOA	Institute on Aging, a CLF provider of intensive case management, purchaser of services, and the initiator of SSHRSA referrals
SSHRSA	Scattered Site Housing and Rental Subsidy Administration

**III. Target Population**

Funded by the Community Living Fund, SSHRSA provides housing options for individuals in skilled nursing facilities in San Francisco, including Laguna Honda Hospital and Zuckerberg San Francisco General Hospital, or individuals who are at imminent risk for nursing home or institutional placement but are willing and able to live in the community with appropriate support. In order to be eligible for SSHRSA, individuals must meet criteria for the Community Living Fund:

- a. Be 18 years and older.
- b. Be a resident of San Francisco.
- c. Be willing and able to live in the community with appropriate supports.

- d. Have income up to 300% of Federal Poverty Level for a single adult: \$36,180 plus savings/assets of up to \$6,000 (Excluding assets allowed under Medi-Cal).
- e. Have a demonstrated need for a service and/or resource that will serve to prevent institutionalization or will enable community living.
- f. Be institutionalized or be deemed at assessment to be at imminent-risk of being institutionalized. In order to be considered “at imminent risk”, an individual must have at a minimum, one of the following:
  - o A functional impairment in a minimum of two Activities of Daily Living (ADL): eating, dressing, transfer, bathing, toileting, and grooming; or
  - o Having a medical condition to the extent requiring the level of care that would be provided in a nursing facility; or
  - o Being unable to manage one’s own affairs due to emotional and/or cognitive impairment.

In addition, individuals must meet the SSHRSA eligibility requirements, including:

- a. Having a level of care that can be reasonably met in the community with supportive services, and
- b. Demonstrating ability to comply with SSHRSA program requirements.

CLF is a fund of last resort and eligible individuals for SSHRSA must have no other ability, resource, or alternative to acquire appropriate independent housing.

#### **IV. Description of Services**

Grantee shall provide the following services during the term of this grant:

##### Overview

Grantee is a member of the Integrated Housing Team which primarily consists of grantee, IOA, and DAAS. The goal of the team is to facilitate coordination for transitions from institutional setting to community living:

##### Participant Eligibility and Referral

The Institute on Aging (IOA) is the CLF provider of intensive case management and purchaser of goods and services. IOA conducts a thorough assessment for CLF which includes eligibility determination, an evaluation of needs, and a service plan. Those individuals found eligible for the SSHRSA program are referred to the grantee. All referrals for this program come directly from CLF.

Grantee reviews the referrals from IOA and determines enrollment of participants for the SSHRSA program. Grantee works in tangent with IOA in assessing needs, identifying preferences, and overall appropriateness for independent community living. Grantee collaborates with IOA and DAAS on the referral and application process to ensure ease of program access.

Grantee will use the Integrated Housing Tool as an electronic client database to facilitate data sharing with IOA and DAAS. Enhancements beyond the needs of this contract may be separately purchased by grantee from RTZ Associates.

### Person-Centered Planning

Grantee uses a person-centered approach to an individualized housing plan based on actual needs to ensure long-term housing success in the community. Program staff participates in multi-disciplinary team meetings and communicates frequently with program participants, their case managers, and other stakeholders to ensure that the search for suitable housing reflects overall program values (e.g., meets accessibility needs, suitable neighborhoods, access to public transportation, community amenities, reception or 24-hour security, etc.) and matches participants with the most appropriate units based on assessed needs and preferences.

Outreach to the Private Residential Real Estate Market: Grantee's marketing/outreach will highlight the benefits of corporate and master leasing with a rental subsidy to prospective key housing partners, including for-profit and non-profit landlords, property managers, real estate brokers, and trade associations. Grantee will develop marketing materials, presentations, brochures, references and testimonials to explain the nature and benefits of the housing program. The materials may include draft master leases and preliminary engagement documents, such as Memorandum of Understanding (MOU), Letters of Collaboration (LOC), and Letters of References.

### Unit Identification

Informed by the assessed housing needs and preferences of program participants, grantee will conduct a systematic search for suitable housing in a range of configurations, excluding single-room occupancy units. This search simultaneously targets owners/managers of large portfolios as well as smaller operators in order to maximize the range of housing options available and expedite progress toward the goal of leasing and securing units based on project goals. All units proposed for master leasing may be subject to DAAS review and approval.

Grantee manages a housing portfolio based on demand of referral pipeline to ensure a low rate of unit vacancy. This will require regular monitoring and reporting of budget projections against referrals.

Targeted Housing Channels can include:

- **Market-Rate Multi-Family Housing** - Market-Rate Multi-Family Housing refers to properties that are rented to people who pay market rent to lease the property. The property has no rent restrictions. The property is conventional and not restricted by affordable housing laws.
- **Affordable Multi-Family Housing** - Affordable Multi-Family Housing refers to properties that were built using a tax subsidy and are required to provide below-market rents for low-income people, persons with disabilities, and/or seniors. *Examples include: Low-Income Housing, Disabled Housing, and Senior Housing.*
- **Set-Aside Housing Agreements** – An executed agreement with a particular housing developer of a Market Rate or Affordable Multi-Family Housing community to 'set-aside' an agreed amount of units within the property for a preference population and priority access to available units. Individual eligibility/rental criteria will generally default to guidelines of the specific property.

- **Master Leasing Housing Agreements** - Controlling lease under which the lessee can sub-lease the property for a period not exceeding the term of the master lease.
- **Shared Housing Opportunities**- Shared Housing is a living arrangement, in which two unrelated people live together to take advantage of the mutual benefits it offers. *Examples include: comfort of not living alone, lower rent and shared utilities.*
- **Residential Care Facilities through the Assisted Living Waiver (ALW) Program** – The use of the ALW to facilitate a safe and timely transition of Medi-Cal eligible seniors and persons with disabilities from a nursing facility to a community home-like setting in a Residential Care Facility for the Elderly (RCFE), an Adult Residential Care Facility (ARF), or public subsidized housing.

Secure Housing / Establish Site Control

Grantee establishes site control using the various housing channels. Site control can be established using several methods to include corporate leasing, affordable Below Market Rate (BMR) units, U.S. Department of Housing and Urban Development (HUD) market rate set asides, shared housing, and master leasing agreements.

Grantee negotiates master leases with landlords/property managers. All master leases are subject to final approval by DAAS. Subject to the requirements of the program, grantee will offer landlords/property managers flexibility regarding master lease terms, such as responsibility for ongoing minor maintenance, code violations, major repairs, and accessibility modifications. Grantee will seek to negotiate long-term master leases with prescribed annual rent increases or a floor/ceiling mechanism, and termination/extension clauses designed to provide maximum housing security to participants and opt-out flexibility. Grantee uses HUD Fair Market Rents (FMRs) as a benchmark, exceeded where warranted by the benefits to program participants; all contract rents are subject to prior approval by DAAS. Grantee will develop, enter into and enforce the terms of a DAAS-approved Occupancy Agreement (i.e., a sub-lease) with each program participant.

Rental Subsidy Administration

Grantee administers a rental subsidy program for program participants. Grantee will conduct income verifications prior to move-in and annually thereafter to ensure eligibility and that program participant pays 50% of his or her monthly income toward rent. Grantee will have a policy defining what qualifies as income and the required supporting documentation. Grantee will be responsible for the ongoing monthly payments of rent per corporate and master leases.

Grantee collects the participant’s share of the total contract rent through a third-party payee service provider. If a participant cannot enroll in a third-party payee service, grantee will collect the share of rent directly from participant. Grantee’s staff notifies DAAS if a tenant experiences or may experience difficulty paying their portion of the rent, so that DAAS may consider whether a larger rent subsidy is necessary to secure or retain housing. Grantee meticulously documents all communication with tenants, landlords, property managers, Third Party Rent Payment providers, and other parties regarding rent payments.

Grantee has a Third-Party Rent Payment Policy. A description of the policy is as follows:

Participant agrees that they have been informed that participation in a Third-Party Rent Payment Service (with an approved provider) is a requirement to receiving housing services from Brilliant Corners. Participant understands that should the applicant receive housing services through Brilliant Corners that results in community housing placement, it is agreed and understood that it is a requirement for an active program participant to pay 50% of their income towards rent on a monthly basis through the approved Third-Party Rent Payment Provider.

If a participant is not approved through a Third-Party Payee agency, grantee has a Rent-Payment Policy. A description of the policy is as follows:

Rent must be delivered or mailed to 1390 Market St. #405 San Francisco, CA 94102. Rent will be received Monday through Friday during posted office hours. Rent may be paid in all forms of U.S. legal tender *except* cash. This includes personal check, cashier's check, or money order. Blank checks (either signed or unsigned with the payee left blank) will not be accepted. The check must be completely filled out before the resident leaves the office. Participant will be notified immediately if their check is returned by their bank due to non-sufficient funds (NSF). Participant will be charged a \$25.00 returned check fee. Participant must pay the returned check fee, as well as, all late charges. Only cashier's check or money orders will be accepted for rent payments after receipt of TWO (2) NSF checks. All residents will be offered an official receipt for any monies they pay Brilliant Corners. Monthly Rent is due in full on the FIRST day of the month, without demand. As a courtesy to participants, rent will be accepted, in a grace period, as late as the FIFTH (5<sup>th</sup>) of the month. If the FIFTH (5<sup>th</sup>) of the month is not a business day, rent will be excepted the next business day of the month. Reasonable Accommodations can be requested, with proper documentation, if the participant unable to pay rent by the FIFTH (5<sup>th</sup>).

#### Owner/Participant Liaison

Grantee serves as liaison between the property owner/manager and the program participant(s) in all matters, including initial occupancy, unit modifications (accessibility, safety), routine maintenance, Fair Housing resident advocacy, and relations with management and neighbors. A contact person will be designated for each program participant. Prior to move-in, a Housing Coordinator discusses emergency protocols with each participant. This is included as part of the Move-In Orientation protocols. Grantee provides each tenant with an emergency contact information list including numbers for building management, local police, fire, and ambulance. Grantee refers any concerns jeopardizing a participant's housing stability to the participant's case manager and/or DAAS as needed; all participant, property owner/manager, and neighbor complaints or grievances will be documented.

#### Unit Repairs and Modifications

Grantee designates a procedure for requesting repairs and/or modifications to a participant's unit from building management. Grantee will determine whether the property owner/manager or grantee is responsible for the requested repairs and/or modifications. The procedure includes a formal request by the program participant to grantee for needed repairs and/or modifications. Where appropriate, grantee will use a

reserve fund or attempt to leverage alternate resources to cover the cost of the requested repairs or modifications.

These resources can include:

- Eligible California Community Transitions (CCT) funding from CA Department of Healthcare Services
- Available grant opportunities
- General public donations and fundraising

#### Unit Habitability and Tenant Wellness Checks

Grantee conducts, at minimum, monthly home visits to ensure basic program oversight and unit monitoring, including unit habitability (e.g., code compliance, life safety, accessibility, cleanliness, etc.) and participant well-being. Program staff uses their knowledge of the San Francisco housing market, tenant rights, and lease agreements to educate and advocate for participants' living in the community. Program staff works closely with participants and landlords to check and immediately remedy property damage and identify opportunities to be proactive and perform preventative maintenance. Regular wellness checks by grantee may identify needed services and/or interventions. Grantee will make appropriate referrals to services and/or contact participant's community case manager. Participants will receive prior notice of all home visits and unit inspections, and grantee will document all such visits/inspections.

For housing units in licensed residential facilities, grantee will, at minimum, conduct monthly updates through the property management or case managers working with participants in the facilities.

#### Housing Retention Services

Grantee serves as liaison to community supports related to participants' housing and serves as a community resource with expertise on specific scattered-site communities. Program staff develops and maintains a data base of community resource data, a network of supportive housing resources available in San Francisco.

These resources can include:

- Security deposit assistance programs
- 24-hour emergency shelter services
- Emergency rental assistance agencies
- Food banks
- Transportation services

Program staff will be aware of community events that the program participants will have access to, and be able to clearly communicate with the participant the value of involvement in these events. Grantee also provides supports around the development of housing-related life skills specific to each program participant (e.g., tenant-landlord mediation, neighbor relations, travel, moving, storage, and establishing utility services). The unique combination of understanding the needs of the program participants and their

lease agreements in community-based housing will allow the grantee to effectively identify precursors to possible tenant-landlord contention.

Grantee works to maintain positive relationships with the property managers, business owners, and tenants who reside within the micro-community. This approach of also understanding the needs of key housing contacts is critical to maintaining and growing the housing portfolio. This will allow program participants unique access to pre-existing relationships in their neighborhoods with the primary goal of rapid inclusion in their communities.

#### Service Provider Communication

Grantee communicates professionally and confidentially with DAAS, IOA, each participant's case manager, and service providers of record during initial move-in and housing stabilization, as well as whenever concerns threatening the participant's well-being and/or housing tenure arise during occupancy. Grantee participates in case conferencing as scheduled by participants' primary case management providers. Additionally, grantee prepares housing updates on participants as requested by DAAS and IOA.

The Program Director, or other designated staff attends the multi-disciplinary team meetings, as well as additional work groups and planning meetings to ensure successful program collaboration. Grantee will participate in the development of Memoranda of Understanding with DAAS, IOA, and other service providers, as necessary.

#### Program Eligibility Reassessment

Grantee conducts program eligibility reassessment on an annual basis or as needed to ensure participants continue to meet income eligibility and appropriateness for the SSHRSA program. Grantee develops necessary assessment tools, guidelines, and an implementation plan for reassessment during the first year of this grant.

#### Participant Access to Affordable Housing Options

Grantee provides a centralized system of managing non-SSHRSA housing applications for program participants interested in and eligible for other housing options. This can open up SSHRSA units for new referents. Services include monitoring affordable housing waitlists and vacancies.

Benefits of this system:

- Program participants have direct access to a housing advocate who can assist them with applying for each affordable housing waitlist option
- Program participants work directly with a housing expert who is knowledgeable and educated in the unique requirements that each affordable application requires to include reasonable accommodation requests to eligibility criteria that may be a barrier to access
- All housing options are available to program participants
- Centralized system provides assurance that notifications regarding the status of housing applications are received and responded to in a timely manner

### Program Participant Exit Plan

Grantee will develop a plan and implementation strategy to graduate or disenroll participants out of the program based on their eligibility, appropriateness, or need. Program participants may voluntarily or involuntarily exit the program. Prior to transitioning out of the program, grantee will assist participants in identifying and securing appropriate housing. Grantee proactively works with participants for other housing opportunities throughout the program enrollment in order to free up housing slots and maximize the ability to serve more clients with housing needs.

### Continuous Quality Improvement

Grantee will take the following systematic steps to ensure program quality:

- Develop program policies and procedures related to all aspects of the SSHRSA program; review annually and revise as needed;
- Utilize an incident reporting system that complies with SSHRSA program policies;
- Provide all program participants with the Grievance Policy & Procedure; participants sign a copy of the P&P which the grantee keeps in their files;
- Develop MOU's and LOC's with key agencies and other service providers, landlords and rental agencies, as appropriate;
- Provide orientation and ongoing training to staff and supervisors; require all staff to study models of scattered-site supportive housing and master leasing, standardize policies to create consistencies and efficiencies;
- Utilize information tracking tools to administer rent subsidies; this includes all necessary tools, policies and procedures;
- Utilize tracking systems to monitor, manage, report on, and analyze master lease, contract rent, repair/maintenance/unit modification, and related property information, including all necessary tools, policies and procedures;
- Conduct weekly team meetings to discuss weekly and monthly objectives and progress toward annual/contract term goals;
- Conduct monthly case conferences as appropriate; such as, during initial occupancy and housing stabilization, or to address housing-related issues during occupancy;
- Program Director or designated staff engages in weekly supervisory review of all program staff work and progress, identifying challenges and areas for improvement, and setting the agenda for case conferences and weekly team meetings;
- Generate monthly reports for DAAS to document and track progress;
- Utilize electronic or paper charting system for the program and open a file on each new participant; system will include an ongoing supervisory review and sign-off process;
- Standardize and consistently document participant information in the Integrated Housing Tool provided by DAAS, which includes progress notes, housing information, and application status.
- Monitor and make necessary corrections on information entered in the Integrated Housing Tool to ensure data reporting is accurate; this includes working with DAAS and RTZ Associates Inc. on improving the data reporting process and/or features of the tool.
- Participate in classes or trainings needed to meet the needs of the target population. A mandated elder abuse reporter training is required for all program staff annually.



- Participate in multi-disciplinary team meetings, and develop procedures and forms to ensure that the case manager and other service providers direction and input is conveyed to Housing Coordinator;
- Post relevant policy information (i.e., Fair Housing guidelines);
- Participate in all aspects of DAAS contract compliance policies, including but not limited to annual program monitoring, year-end reporting, annual independent audit, and cultural competency reporting;
- Conduct monthly visits to ensure client well-being and unit habitability; develop forms and tracking systems to capture and analyze information regarding housing stability, unit condition, landlord-tenant relations, efficiency and responsiveness in maintenance, repairs, dispute resolution, etc.;
- Comply with Local, State, and Federal policies and requirements such as the Health Insurance Portability and Accountability Act (HIPAA) and Sexual Orientation and Gender Identity (SOGI) data collection;
- Program staff will administer and analyze data from a resident satisfaction survey annually.

Fiscal Management

Grantee will be responsible for negotiating and effectively managing required security deposits for all master leases, possible short-term subsidies, and rental patches based on terms pre-approved by DAAS. All communication with program participants, landlords, property managers, Third-Party Rent Payment providers, and other parties regarding security deposit payments, short-term subsidies, and patches will be documented.

Grantee will actively manage housing portfolio in a fiscally responsible manner to prevent unnecessary expenditures and to save costs to the program.

**V. Location and Time of Services**

Brilliant Corners is located at 1390 Market Street, Suite 405, San Francisco, CA 94102, and is open Monday through Friday, 9 a.m. to 5 p.m., excluding holidays. For non-business hours, residents are provided by their building management with a 24-hour emergency number.

**VI. Grantee Responsibilities**

- Grantee administers the Scattered Site Housing and Retention Subsidy Administration Program as described in this grant agreement.
- Grantee develops and maintains policies and procedures for all aspect of program operation, including a Quality Assurance Plan.
- Grantee provides training and ongoing supervision and oversight of all program staff.
- As grantee is a mandated reporter for suspected elder abuse/neglect, staff will complete annual Elder and Dependent Adult Abuse Reporting Trainings.
- Grantee is compliant with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy and security rules. For specific compliance requirements, please refer to the Grant Agreement Appendix E.
- Grantee resolves grievances related to program services at the program level and adheres to the DAAS Grievance Policy and Procedure.

- Grantee administers a Client Satisfaction Survey annually to gather input regarding program participant's direct experience.
- Grantee communicates and collaborates regularly with DAAS to help provide support and quality services to program participants.
- Grantee participates in DAAS Commission, program-related, and other meetings as needed.

## **VII. Service Objectives**

On an annual basis, Grantee will meet the following Service Objectives:

1. Serve a minimum of 110 unduplicated program participants annually. Unduplicated program participants include new program participants served each year and program participants who were housed in previous fiscal years but continue to receive a rental subsidy in current year.
2. Provide a minimum of 1200 units of service annually. A unit of service is defined by monthly occupancy but includes services such as, person-centered planning, unit identification, master leasing, rental subsidy administration, owner/participant liaison, unit repairs and modifications, housing retention services, and/or service provider communication.
3. Identify and acquire appropriate scattered site housing units and complete placements of program participants within 60 days of participants' readiness to transition.
4. Maintain a housing portfolio with at least 98% occupancy rate annually.
5. Conduct monthly housing retention visits and unit habitability checks on 100% of participants.
6. Collect at least 90% of monthly rent for occupied units from participants or their third party rent payer.
7. Conduct annual income verification for 90% of participants.

## **VIII. Outcome Objectives**

On an annual basis, Grantee will meet the following Outcome Objectives:

1. Program participants are placed in the most appropriate housing that meets their needs and preferences. A minimum of 95% of program participants will be satisfied with their housing.
2. Program participants have housing stability as evidenced by a minimum of 85% of participant lease violations being resolved without loss of housing.
3. Program participants have housing stability as evidenced by at least 90% of program participants retaining their housing for more than one year.
4. Program participants have the housing and supports they need to live independently in the community. A minimum of 95% of program participants will maintain independent community living annually.
5. Program participants who exit the program have other housing options. At least 75% of participants who exit housing will secure housing appropriate to their needs (e.g. independent/unsubsidized housing, move-in with family or friends, transition to level of care appropriate for their needs, etc.).

## **IX. Reporting Requirements**

Grantee will provide various reports during the term of the grant agreement.

1. Grantee will provide monthly and/or quarterly reports summarizing contract activities, referencing the tasks as described in Section IV-Description of Services and Section VII-Service Objectives and VIII-Outcome Objectives. Grantee will enter the monthly metrics in the CARBON database by the 15th of the following month.

2. Grantee will also provide an annual report that will include accomplishments and challenges encountered by the grantee. This annual report is due 45 days after the completion of the program year. Grantee will enter the annual metrics in the CARBON database by the 15th of the month following the end of the program year.
3. Grantee will provide Ad Hoc reports as required by the Department.
4. On an annual basis, grantee will provide results of the resident satisfaction survey. This may or may not be provided at the same time as the annual report.
5. Quarterly and Annual Reports will be entered into the Contracts Administration, Reporting, and Billing Online (CARBON) system.

For assistance with reporting requirements or submission of reports, contact:

[Rocio.Duenas@sfgov.org](mailto:Rocio.Duenas@sfgov.org)  
 Contract Manager, Office of Contract Management  
 Human Services Agency

or

[Carrie.Wong@sfgov.org](mailto:Carrie.Wong@sfgov.org)  
 Director, Long Term Care Operations  
 Department of Aging and Adult Services

**X. Monitoring Activities**

- A. Program Monitoring: Program monitoring will include review of participant eligibility, back-up documentation for reporting progress towards meeting service and outcome objectives, QA reports, satisfaction survey results, and onsite monitoring.
- B. Fiscal Compliance and Contract Monitoring: Fiscal monitoring will include review of the grantee's organizational budget, the general ledger, quarterly balance sheet, cost allocation procedures and plan, State and Federal tax forms, audited financial statement, fiscal policy manual, supporting documentation for selected invoices, cash receipts and disbursement journals. The compliance monitoring will include review of Personnel Manual, Emergency Operations Plan, Compliance with the Americans with Disabilities Act, subcontracts, and MOUs, and the current board roster and selected board minutes for compliance with the Sunshine Ordinance.

	A	B	C	D	E	F	G
1							Appendix B, Page 1
2							Document Date: 2/28/18
3	<b>HUMAN SERVICES AGENCY GRANT BUDGET SUMMARY</b>						
4	<b>BY PROGRAM</b>						
5	Name			Term			
6	Brilliant Corners			7/1/18 - 6/30/23			
7	(Check One) New <input checked="" type="checkbox"/> Renewal <input type="checkbox"/> Modification <input type="checkbox"/>						
8	If modification, Effective Date of Mod. No. of Mod.						
9	Program: Scattered-Site Housing & Rental Subsidy Administration						
10	Budget Reference Page No.(s)						Total
11	Program Term						7/1/18-6/30/23
12	Expenditures						
13	Salaries & Benefits	\$348,641	\$348,641	\$348,641	\$348,641	\$348,641	\$1,743,204
14	Operating Expense	\$159,089	\$101,639	\$101,004	\$100,508	\$99,813	\$562,052
15	<b>Subtotal</b>	<b>\$507,730</b>	<b>\$450,280</b>	<b>\$449,645</b>	<b>\$449,148</b>	<b>\$448,454</b>	<b>\$2,305,257</b>
16	Indirect Percentage (%)	15%	15%	15%	15%	15%	
17	Indirect Cost (Line 16 X Line 15)	\$76,159	\$67,542	\$67,447	\$67,372	\$67,268	\$345,788
18	Capital Expenditure	\$0	\$0	\$0	\$0	\$0	\$0
19	Direct Client Pass Through	\$2,491,925	\$2,557,993	\$2,558,723	\$2,559,293	\$2,560,092	\$12,728,026
20	Total Expenditures	\$3,075,814	\$3,075,814	\$3,075,814	\$3,075,814	\$3,075,814	\$15,379,070
21	HSA-DAAS Revenues						
22							
23	General Fund	\$3,075,814	\$3,075,814	\$3,075,814	\$3,075,814	\$3,075,814	\$15,379,070
24							
25							
26							
27							
28							
29							
30							
31	<b>TOTAL HSA-DAAS REVENUES</b>	<b>\$3,075,814</b>	<b>\$3,075,814</b>	<b>\$3,075,814</b>	<b>\$3,075,814</b>	<b>\$3,075,814</b>	<b>\$15,379,070</b>
32	Other Revenues						
33	Program Income						
34							
35							
36							
37							
38	Total Revenues						\$0
39	Full Time Equivalent (FTE)						
41	Prepared by:		Telephone No.:			Date	
42	HSA-CO Review Signature: _____						
43	HSA #1						11/15/2007

05-11  
Aides, COB  
BSP Clerk  
GAC Clerk  
Dep City Atty

President, District 5  
BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-7630  
Fax No. 554-7634  
TDD/TTY No. 544-5227

London Breed

**PRESIDENTIAL ACTION**

Date: 5/24/18

To: Angela Calvillo, Clerk of the Board of Supervisors

Madam Clerk,

Pursuant to Board Rules, I am hereby:

Waiving 30-Day Rule (Board Rule No. 3.23)

File No. \_\_\_\_\_ (Primary Sponsor)

Title. \_\_\_\_\_

Transferring (Board Rule No. 3.3)

File No. 180359 Department \_\_\_\_\_ (Primary Sponsor)

Title. Grant Agreement - Brilliant Corners - Scattered Site Housing and Rental Subsidy Administration Services - Not to Exceed \$16,916,977

From: Budget & Finance Sub \_\_\_\_\_ Committee

To: Government Audit & Oversight \_\_\_\_\_ Committee

Assigning Temporary Committee Appointment (Board Rule No. 3.1)

Supervisor \_\_\_\_\_

Replacing Supervisor \_\_\_\_\_

For: \_\_\_\_\_ Meeting  
(Date) (Committee)

London Breed, President  
Board of Supervisors

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
MAY 24 11:10:30 AM

**Carroll, John (BOS)**

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**From:** Mchugh, Eileen (BOS)  
**Sent:** Thursday, May 24, 2018 11:27 AM  
**To:** BOS-Supervisors; BOS-Legislative Aides; Calvillo, Angela (BOS); Somera, Alisa (BOS); Nevin, Peggy (BOS); Carroll, John (BOS); BOS-Operations; BOS-IT; GIVNER, JON (CAT); Power, Andres (MYR); Wong, Linda (BOS)  
**Subject:** Presidential Action Memos - Transferring File No. 180359  
**Attachments:** PA Memo - File No 180359.pdf  
**Categories:** 180359

Dear Supervisors:

Please be advised that a Presidential Action Memo was received transferring File No.180359 from the **Budget & Finance Sub-Committee** to the **Government Audit & Oversight Committee**.

**File No 180359** - Resolution approving the grant agreement between the City and County of San Francisco, by and through its Human Services Agency, and the non-profit Brilliant Corners to provide Scattered Site Housing and Rental Subsidy Administration services to seniors and adults with disabilities during the period of July 1, 2018, through June 30, 2023, for a total not to exceed amount of \$16,916,977.

Regards,

Eileen McHugh  
Executive Assistant  
Board of Supervisors  
1 Dr. Carlton B. Goodlett Place, City Hall, Room 244  
San Francisco, CA 94102-4689  
Phone: (415) 554-7703 | Fax: (415) 554-5163  
[eileen.e.mchugh@sfgov.org](mailto:eileen.e.mchugh@sfgov.org) | [www.sfbos.org](http://www.sfbos.org)

City and County of San Francisco



Mark Farrell, Mayor

Human Services Agency

Department of Human Services  
Department of Aging and Adult Services  
Office of Early Care and Education

Trent Rhorer, Executive Director

March 27, 2018

Angela Calvillo, Clerk of the Board  
Board of Supervisors  
City and County of San Francisco  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, California 94102-4689

**RE: Proposed resolution for the contract with Brilliant Corners for the provision of Scattered Site Housing and Rental Subsidy Administration**

Dear Ms. Calvillo:

Enclosed for the Board of Supervisors' consideration and approval, please find a proposed Board Resolution requesting approval of the grant agreement with Brilliant Corners for the provision of Scattered Site Housing and Rental Subsidy Administration to San Francisco seniors and adults with disabilities.

If you need additional information, please contact Rocío Duenas, Contract Manager at 557-5626.

Please calendar this item at the Board's earliest convenience and advise us of the date of introduction.

Thank you for your assistance.

Sincerely,

Trent Rhorer  
Executive Director

Enclosure

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2018 APR -5 PM 1:34

**FORM SFEC-126**  
**NOTIFICATION OF CONTRACT APPROVAL**  
(S.F. Campaign and Government Conduct Code § 1.126)

<b>City Elective Officer Information</b> (Please print clearly)	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors

<b>Contractor Information</b> (Please print clearly)	
Name of Contractor: Brilliant Corners	
Please list the names of (1) members of the contractor's board of directors: Board Roster Attached (2) the contractor's chief executive officer, chief financial officer and chief operating officer: William Pickel, CEO Robert Pascual, Director of Finance Jonas Mok, COO (3) any person who has an ownership of 20 percent or more in the contractor: N/A (4) any subcontractor listed in the bid or contract: N/A (5) any political committee sponsored or controlled by the contractor: N/A	
Contractor address: 1390 Market Street, Suite 405, San Francisco, CA 94102	
Date that contract was approved:	Amount of contract: \$16,916,977
Describe the nature of the contract that was approved: Brilliant Corners will provide services that include person-centered planning, rental unit identification and acquisition, rental subsidy administration, tenant-landlord liaison services, housing retention services, unit habitability and tenant well-being inspections, and management of unit repairs and modifications for reasonable accommodations.	
Comments:	

This contract was approved by (check applicable)

The City elective officer(s) identified on this form

A board on which the City elective officer(s) serves

San Francisco Board of Supervisors

Print Name of Board

The board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on the form sits

Print Name of Board

<b>Filer Information</b> (Please print clearly)	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

Signature of the Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if Submitted by Board Secretary or Clerk)

Date Signed



Board of Directors  
**BRILLIANT CORNERS**  
Updated January 31<sup>st</sup>, 2018

Name and Position	Term	Committee	Address	Contacts
<b>Donny Lieberman (2<sup>nd</sup> Term)</b> President, Brilliant Corners President, Sunseri Construction	09/2011  09/2017 to 09/2020	Executive Nominating	48 Comanche Court Chico, CA 95928	(W) 530-891-6444 (H) 530-894-7098 (C) 530-828-1337 <a href="mailto:dl@sunsericonstruction.com">dl@sunsericonstruction.com</a>
<b>Robert C. Mills (1<sup>st</sup> Term)</b> Vice President, Brilliant Corners Partner, Goldfarb & Lipman	04/2017  04/2017 to 04/2020	Executive Project Review Governance Audit	47 Milton Street San Francisco, CA 94112	(H) 415-584-4325 (W) 510-836-6336 (C) 415-250-2241 <a href="mailto:rmills@goldfarblipman.com">rmills@goldfarblipman.com</a>
<b>David Coury (1<sup>st</sup> Term)</b> Treasurer, Brilliant Corners Coury Rugs, Owner Marin Environmental Housing Collaborative, Housing Leadership Alliance for Marin, Canal Housing Alliance, Housing Element Working Group	08/2008  08/2017 to 08/2020	Executive Finance	P.O. Box 278 Corte Madera, CA 94976; 317 Bayview Street San Rafael, CA 94901	(H) 415-717-7770 <a href="mailto:davecoury@yahoo.com">davecoury@yahoo.com</a>
<b>Shamus Roller (1<sup>st</sup> Term)</b> Secretary, Brilliant Corners Executive Director, National Housing Law Project	04/2017  04/2017 to 04/2020	Executive Finance Nominating Governance	240 Sussex Street San Francisco, CA 94131	(W) 415-546-7000 x3106 (C) 916-502-5846 <a href="mailto:sroller@nhlp.org">sroller@nhlp.org</a>
<b>Bruce Oka, (2<sup>nd</sup> Term)</b> Member, Brilliant Corners Disability Rights Advocate Board Director, San Francisco Municipal Transportation Authority, Parking Authority Commissioner	04/2006  04/2015 to 04/2018	Member Project Review Governance	241 16 <sup>th</sup> Avenue San Francisco, CA 94118	(H) 415-221-1681 (C) 415-420-3062 <a href="mailto:bruceoka55@gmail.com">bruceoka55@gmail.com</a>
<b>Cynthia Nagendra (1<sup>st</sup> Term)</b> Member, Brilliant Corners Director, National Alliance to End Homelessness	01/2018  01/2018 to 01/2021	Member	4073 17 <sup>th</sup> Street San Francisco, CA 94114	(c) 201-923-7413 <a href="mailto:Cnagendra@niah.org">Cnagendra@niah.org</a>
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