

## APPENDIX A –SERVICES TO BE PROVIDED BY GRANTEE

### INSTITUTE ON AGING

July 1, 2014 – June 30, 2015

#### ADULT DAY CARE SERVICES

##### I. Purpose

To assist licensed Adult Day Care Centers (ADC) with operating costs of serving seniors and adults with disabilities, in order to maintain optimal capacity for self-care and the ability to live in the community rather than being placed in a long-term care institution.

##### II. Definitions

Adult Day Care  
(ADC)

ADC program is a community-base program that provides non-medical care to persons 18 years of age or older in need of personal care services, supervision or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis. The State Department of Social Services (DSS) licenses these centers as community care facilities. This program is not eligible for Medi-Cal reimbursement.

DAAS

Department of Aging and Adult Services

Disability

A condition attributable to mental or physical impairment, or a combination of mental and physical impairments including hearing and visual impairments, that results in substantial functional limitations in one (1) or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, economic self-sufficiency, cognitive functioning, and emotional adjustment.

Frail

An older individual that is determined to be functionally impaired because the individual either: (a) Is unable to perform at least two activities of daily living, including bathing, toileting, dressing, feeding, breathing, transferring and mobility and associated tasks, without substantial human assistance, including verbal reminding, physical cueing or supervision. (b) Due to a cognitive or other mental impairment, requires substantial supervision because the older individual behaves in a manner that poses a serious health or safety hazard to the individual or to others.

Grantee

Institute on Aging-Ruth Ann Rosenberg Adult Day Services

HSA

Human Services Agency of City and County of San Francisco

OOA

Office on the Aging

OCM

Office of Contract Management, San Francisco Human Services Agency

### III. Target Population

Individuals 60 years of age or older or individuals between 18 and 59 years of age that are living with disabilities. Services must target clients who are members of one or more of the following target groups that have been identified as demonstrating the greatest economic and social need. In particular:

- Low-income
- Non or limited –English speaking
- Minority
- Frail
- Lesbian/Gay/Bisexual/Transgender

### IV. Eligibility for ADC Services

Participants who are currently enrolled in the licensed ADC program of the Grantee.

### V. Location and Time of Services

The details of the sites and operation hours will be attached in the Site Chart of the certified grant.

### VI. Description of Services

The Grantee is operating an ADC that is currently licensed by the California Department of Social Services/Community Care Licensing, to provide non-medical day care services to meet the needs of functionally impaired adults. Services are provided according to an individual plan of care in a structured comprehensive program that will provide a variety of social, psychological and related support services in a protective setting on less than a 24-hour basis.

Definitions of services provided by the Grantee are included in Section VII below.

### VII. Contractor Responsibilities/Units of Service and Definitions ( Annually)

During the term of the grant, the Grantee will provide service to **65 consumers** with the number of units of service indicated below.

#### Adult Day Care

Provision of personal care for dependent adults in a supervised, protective, congregate setting during some portion of a twenty-four hour day. Services offered by adult day care and adult day care support centers typically include social and recreational activities, health monitoring, supervision, meals and snacks, and assistance with ADL (Activities of Daily Living) training, counseling, and meals. Services offered by adult day health care centers typically include Nursing, Physical and Occupational Therapy, Nutrition services, Activities, Social Services, Transportation, and Assistance with ADL. **The units of service to be reported are the number of hours of service received by the consumers.**

UNIT: One Hour

UNIT: 24,700

### VIII. Service Objectives

#### On an annual basis:

- Grantee will provide adult day services to 65\_unduplicated clients
- Grantee will provide 24,700 hours of day care service to the clients

## **IX. Outcome Objectives**

All the clients served by this OOA funded program will receive a consumer satisfaction survey.

- At least 65% of the consumers or caregivers will return the annual consumer satisfaction
- At least 85% of the consumers indicated excellent or good in rating the quality of services the participants received at the adult day program.
- At least 85% of the consumers reported that activities offered at the adult day program increased the participants' socialization opportunities and interaction with others.
- At least 80% of consumers who participated in one or more physical activities offered at the adult day program reported feeling healthier due to participation
- At least 70% of consumers enrolled in the adult day program will avoid institutionalization as evidence by being in the adult day program from their date of enrollment to the end of the fiscal year.

## **X. Monitoring Activities**

- A. **Program Monitoring:** Program monitoring will include review of compliance to specific program standards or requirements; client eligibility and targeted mandates, back up documentation for the units of service and all reporting, and progress of service and outcome objectives; how participant records are collected and maintained; reporting performance including monthly service unit reports on CAGetCare, maintenance of service unit logs; agency and organization standards, which include current organizational chart, evidence of provision of training to staff regarding the Elder Abuse Reporting; program operation, which includes a review of a written policies and procedures manual of all OOA funded programs, written project income policies if applicable, grievance procedure posted in the center/office, and also given to the consumers who are homebound, hours of operation are current according to the site chart; a board of director list and whether services are provided appropriately according to Sections VI and VII.
- 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.

## **XI. Reporting Requirements**

- A. Grantee will enter into CA-GetCare the consumer data including the Intake Form by the required due date as specified by the OOA.
- B. Grantee will enter into CA-GetCare all service unit data as aggregate service units by the 5<sup>th</sup> working day of the month for the preceding month.
- C. Grantee will provide a monthly report of number of unduplicated clients served and number of hours of day care services provided as described in Section VIII Service Objectives. Grantee will enter the monthly metrics in the Contracts Administration, Reporting, and Billing Online (CARBON) database by the 15<sup>th</sup> of the following month.
- D. Grantee will provide an annual report summarizing the contract activities, referencing the tasks as described in Section VIII & IX – Service and Outcome Objectives. This report will also include accomplishments and challenges encountered by the Grantee. Grantee will enter the annual metrics in the CARBON database by the 15<sup>th</sup> of the month following the end of the program year.

- E. Grantee will develop and maintain with OOA's approval, an updated Site Chart (using OOA's format) with details about the adult day services program.
- F. Grantee will provide other reports as requested.
- G. Apart from the on-line reporting via CAGetCare, and reports requested to be sent via e-mail to the Program Analyst and/or Contract Manager, Monthly and Annual Reports will be entered into the Contracts Administration Reporting and Billing On-line (CARBON) system. For assistance with reporting requirements or submission of reports, contact:

Justin Chan  
Contracts Manager/HSA  
P.O. Box 7988  
San Francisco, CA 94120  
Justin.Chan@sfgov.org

Denise Cheung  
DAAS, Office on the Aging  
P.O. Box 7988  
San Francisco, CA 94120  
Denise.Cheung@sfgov.org







Program: Adult Day Care Se  
 (Same as Line 9 on HSA #1)

**Operating Expense Detail**

<u>Expenditure Category</u>	TERM			TOTAL
	7/1/14-6/30/15			7/1/14-6/30/15
Rental of Property	\$15,000			\$15,000
Utilities(Elec, Water, Gas, Phone, Scavenger)				
Office Supplies, Postage				
Building Maintenance Supplies and Repair				
Printing and Reproduction				
Insurance				
Staff Training				
Staff Travel-(Local & Out of Town)				
Rental of Equipment				
CONSULTANT/SUBCONTRACTOR DESCRIPTIVE TITLE				
OTHER				
Program Supplies				
Food Supplies	\$9,466			\$9,466
Client Transportation	\$7,476			\$7,476
TOTAL OPERATING EXPENSE	\$31,942			\$31,942



Program: Adult Day Care Services  
 (Same as Line 9 on HSA #1)

**Capital Expenditure Detail  
 (Equipment and Remodeling Cost)**

EQUIPMENT		TERM	7/1/14-6/30/15			TOTAL
No.	ITEM/DESCRIPTION					
						0
						0
						0
						0
						0
						0
						0
						0
TOTAL EQUIPMENT COST			0	0	0	0
<b>R E M O D E L I N G</b>						
Description:						0
						0
						0
						0
						0
TOTAL REMODELING COST			0	0	0	0
TOTAL CAPITAL EXPENDITURE (Equipment and Remodeling Cost)			0	0	0	0
<b>HSA #4</b>						<b>11/15/2007</b>

## Appendix C – Method of Payment

- I. In accordance with Section 5 of the Grant Agreement, payments shall be made for actual costs incurred and reported for each month. Under no circumstances shall payment exceed the amount set forth in Section 5 Compensation of the Agreement.
- II. Grantee will submit all bills, invoices and related documentation in the format specified by SFHSA within 15 days after the month of service to SFHSA’s web-based Contracts Administration, Reporting, and Billing Online (CARBON) System at: <https://contracts.sfhsa.org>  
  
Grantee may submit bills, invoices and related documentation in the format specified by SFHSA via paper or email only upon special permission by their assigned Contract Manager.
- III. Grantee must sign up to receive payments electronically via Automated Clearing House (ACH). Remittance information will be provided through Paymode-X. Additional information and sign up is available at: <http://www.sfgov.org/ach>
- IV. The Executive Director or CFO must submit a letter of authorization designating specific users who will have access to CARBON to electronically submit and sign for invoices, budget revision requests, program reports, and view other information that is in CARBON.
  - A. Submittal of the invoice by designated authorized personnel with proper login credentials constitutes an electronic signature and certification of the invoice.
  - B. Authorized personnel with CARBON login credentials shall not share or internally reassign logins.
  - C. Grantee shall notify SFHSA Contract Manager immediately regarding any need for the restriction or termination of a previously authorized CARBON login.
- V. Invoices shall include actual expenditures incurred during the month, unless otherwise specified.
  - A. The invoice supplied shall include the total dollar amount claimed for the month.
  - B. There shall be no variance from the line item budget submitted which adversely affects program performance as contained in the Grantee’s proposal and specified in the grant.
  - C. The invoice shall show by line item:
    1. Budgeted amount (per approved grant budget or modification)
    2. Expenses for invoice period
    3. Expenses year-to-date
    4. % of budget expended
    5. Remaining balance
    6. Adjustments, including advance payment recovery
    7. Program income when specified in the grant agreement.
  - D. Personnel expenditures will show same line item categories by position detail. Detail will show name of employee, position name, %FTE and budgeted salary.
  - E. With written approval from SFHSA Program/Contract Manager, Grantee may adjust items within the existing budget of the grant in accordance with SFHSA Office of Contract Management Policy for Budget Line Item Revisions.
  - F. Supporting Documentation, except as discussed below need not be submitted with the invoice. However, Grantee must keep and make available as requested such supporting documentation for all expenditures for which reimbursement is requested for all costs so claimed. All charges incurred shall be due and payable only after services have been rendered, except as stated otherwise. Supporting documentation must be uploaded into CARBON and submitted along with the invoice.

- Documentation should be submitted with the invoice for all payroll expenses paid to budgeted personnel for the period covered by the invoice. Payroll information can be from a payroll service or a payroll ledger from the Grantee's accounting system
- For any and all non-recurring expenditures (e.g. equipment purchases/capital upgrades and building repair and upgrades) and/or items that exceed \$5,000, Grantee shall supply back-up documentation in the form of a paid invoice(s).
- Indirect costs shall not be applied to non-reoccurring expenses.
- All subcontracted services must be documented by submission of the subcontractor's paid invoice, regardless of dollar amount.
- If this grant agreement contains any Pass-Through funding requiring specific expense documentation from the source agency, Federal, State, Private or other then the following documentation shall also be included with each invoice submission:

Funding Agency: \_\_\_\_\_ CFDA or other Identification #: \_\_\_\_\_

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

- VI. Following SFHSA verification of submitted Invoice with required documentation of incurred expenses via CARBON, SFHSA will authorize payment within 10 business days after receipt of the invoice.
- VII. Within 45 days after the end of the grant period, Grantee shall submit a final report reflecting actual expenditures, which will be supported by the Grantee's accounting records. If a refund is due SFHSA, it will be submitted with the final report.
- VIII. Advances or prepayments are allowable in order to meet the Grantee cash flow needs in certain unique circumstances. The Agency, at its sole discretion, shall make available to the Grantee upon written request an advance amount not to exceed two (2) months or 1/6<sup>th</sup> of the total annualized grant award, or as mutually agreed upon. The advanced sum shall be deducted from the Grantee's monthly invoices at an equal rate each month that will enable repayment by the tenth month of the fiscal year. For a twelve-month grant the rate of repayment of the advance will be 1/10<sup>th</sup> per month from July to April. Requests for advance payment will be granted on a case-by-case basis and are not intended to be a regular "automatic" procedure. Approval will be a consensus of Program and Contract Staff.

Once the grant is certified, the Grantee, prior to distribution of any advanced payment, must fulfill the following conditions:

- 1. All contractual compliance requirements must be current, i.e., reports submitted and approved, corrective actions resolved, business tax and insurance certificates in place, prompt and fully documented billings.

2. The Grantee shall submit a written request with a narrative justification that fully describes the unique circumstances to the Program Manager and Contract Manager for review and approval.
  3. Final invoice from the preceding fiscal year must be received prior to advance distribution.
- IX. Timely Submission of Reports – If reports/documents are required, Grantee shall submit these reports prior to submitting invoices. Failure to submit required reports/documents in CARBON by specified deadlines may result in withholding of grant payments.

### 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
Department of Aging and Adult Services	07/01/2014	\$431,762
Department of Aging and Adult Services	07/01/2013	\$199,185
Department of Aging and Adult Services	07/01/2013	\$152,476
Department of Aging and Adult Services	07/01/2013	\$196,240
Department of Aging and Adult Services	07/01/2013	\$51,765
Department of Aging and Adult Services	07/01/2013	\$48,521
Department of Aging and Adult Services	01/01/2014	\$127,000
Department of Aging and Adult Services	07/01/2013	\$325,483
Department of Aging and Adult Services	07/01/2013	\$87,735.01
Department of Aging and Adult Services	07/01/2013	\$3,224,024

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

**GRANT AGREEMENT**

between

CITY AND COUNTY OF SAN FRANCISCO

and

**INSTITUTE ON AGING**

**THIS GRANT AGREEMENT** (this “Agreement”) is made this **1<sup>st</sup>** day of **July**, 2014, in the City and County of San Francisco, State of California, by and between **Institute on Aging, 3575 Geary Blvd, San Francisco, CA 94118** (“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) seeking a grant, for the purpose of funding the matters set forth in the Grant Plan (as hereinafter defined); and summarized briefly as follows:

**Adult Day Care and Alzheimer’s Day Care Resource Center for seniors and adults with disabilities;**

and

**WHEREAS**, approval for said Agreement was obtained when the Civil Service Commission approved Grant Number **4078-10/11** on **March 7, 2011**; and

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

**NOW, THEREFORE**, in consideration of the promises 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.

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

(n) “**HRC**” shall mean the Human Rights Commission of 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.

**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 “subgrantee,” “successor” or “assign” herein refers only to a subgrantee (“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 21.10-1 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, 2014** 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, 2015**

### **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 subgrantees 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 **ONE HUNDRED SEVENTY SIX THOUSAND, TWO HUNDRED SIXTY** Dollars (\$176,260) for the period from **JULY 1, 2014 – JUNE 30, 2015, plus any contingent amount authorized by City and certified as available by the Controller.**

**Contingent amount:** Up to **SEVENTEEN THOUSAND, SIX HUNDRED TWENTY SIX** Dollars (\$17,626) for the period from **JULY 1, 2014 – JUNE 30, 2015, may be available, in the City’s sole discretion, as a contingency subject to authorization by the City and certified as available by the Controller.**

The maximum amount of Grant Funds disbursed hereunder shall not exceed **ONE HUNDRED NINETY THREE THOUSAND, EIGHT HUNDRED EIGHTY SIX** Dollars (\$193,886) for the period from **JULY 1, 2014 – JUNE 30, 2015.**

Grantee understands that, of the maximum dollar disbursement listed in Section 5.1 of this Agreement, **the amount shown as the Contingent Amount may not to be used in Program Budgets attached to this Agreement as Appendix B, and is not available to Grantee without a revision to the Program Budgets of Appendix B specifically approved by Grant Agreement Administrator.** Grantee further understands that no payment of any portion of this contingency amount will be made unless and until such funds are certified as available by Controller. Grantee agrees to fully comply with these laws, regulations, and policies/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 OMB Circular A-122, 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 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 Disallowance and Single Audit Requirements:** If Grantee claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States 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. 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. **Single Audit Requirements:** Grantees that expend \$500,000 or more in a year from any and all Federal awards shall have a single audit conducted in accordance with OMB Circular A-133. Grantees that expend less than \$500,000 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.

## **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 OMB Circular A-133, 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, 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.** Pursuant to San Francisco Administrative Code §21.35, any grantee, subgrantee or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. A grantee, subgrantee or consultant will be deemed to have submitted a false claim to the City if the grantee, subgrantee 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.** Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

(a) Grantee shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty (30) days following the date on which this Agreement becomes effective (unless Grantee has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Grantee; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

(b) Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Grantee of the terms of this Agreement. If, within thirty (30) days after Grantee receives written notice of such a breach, Grantee fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Grantee fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

(c) Any Subgrant entered into by Grantee shall require the subgrantee to comply, as to the subgrantee's Eligible Employees, with each of the terms of this section.

(d) Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

**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 Subgrants.** 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.
- (c) Commercial Automobile Liability Insurance with limits not less than one million dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- (d) Professional liability insurance for negligent acts, errors or omission with respect to professional or technical services, if any, required in the performance of this Agreement with limits not less than one million dollars (\$1,000,000) each claim.

**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 Waiver.** Left blank by agreement of the Parties.

**10.9 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.

**10.10** 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.

**10.11** 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.

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

**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.

**ARTICLE 13  
ASSIGNMENTS AND SUBGRANTING**

**13.1 No Assignment by Grantee.** Grantee shall not, either directly or indirectly, assign, transfer, hypothecate, subgrant 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 Subgranting.** If Appendix E lists any permitted subgrantees, then notwithstanding any other provision of this Agreement to the contrary, Grantee shall have the right to subgrant 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 subgrant or delegate the whole of the Grant Plan. Grantee may subgrant 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 subgrantee 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 subgranted 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 subgrantee 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 Subgrant.** Each subgrant 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 subgrant shall incorporate all of the terms of this Agreement, insofar as they apply to the subgranted portion of the Grant Plan. Without limiting the scope of the foregoing, each subgrant 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 subgrant 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 GRANTEE 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 Grant Management P.O. Box7988 San Francisco, CA 94120-7988 Facsimile No. 415-557-5679
---------------------------	---

If to Grantee:

Institute on Aging  
3330 Geary Blvd, 2<sup>nd</sup> Floor  
San Francisco, CA 94118  
Attn: J.Thomas Briody  
Facsimile No. (415) 750-4179  
Email: tbriody@ioaging.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 Left Blank by Agreement of the Parties**

### **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.** As a condition to this Agreement, Grantee shall execute the “Chapter 12B Declaration: Nondiscrimination in Grants and Benefits” form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

(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 require 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. Grantee 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 Grantee's obligations under the MCO is set forth in this Section. Grantee is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Grantee to pay Grantee'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 Grantee is obligated to keep informed of the then-current requirements. Any subgrant entered into by Grantee shall require the subgrantee 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 Grantee's obligation to ensure that any subgrantees of any tier under this Agreement comply with the requirements of the MCO. If any subgrantee under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Grantee.

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

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

f. Grantee'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 Grantee fails to comply with these requirements. Grantee agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Grantee's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Grantee 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, Grantee fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Grantee fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, 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. Grantee represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

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

#### **16.9. Requiring Health Benefits for Covered Employees**

Grantee agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Grantee shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Grantee chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Grantee is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Grantee's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Grantee if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Grantee fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Grantee fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subgrant entered into by Grantee shall require the Subgrantee to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Grantee shall notify City's Office of Grant Administration when it enters into such a Subgrant and shall certify to the Office of Grant Administration that it has notified the Subgrantee of the obligations under the HCAO and has imposed the requirements of the HCAO on Subgrantee through the Subgrant. Each Grantee shall be responsible for its Subgrantees' compliance with this Chapter. If a Subgrantee fails to comply, the City may pursue the remedies set forth in this Section against Grantee based on the Subgrantee's failure to comply, provided that City has first provided Grantee with notice and an opportunity to obtain a cure of the violation.

e. Grantee shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Grantee's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

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

g. Grantee shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Grant.

h. Grantee shall keep itself informed of the current requirements of the HCAO.

i. Grantee shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subgrantees and Subtenants, as applicable.

j. Grantee shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Grantee shall allow City to inspect Grantee's job sites and have access to Grantee's employees in order to monitor and determine compliance with HCAO.

l. City may conduct random audits of Grantee to ascertain its compliance with HCAO. Grantee agrees to cooperate with City when it conducts such audits.

m. If Grantee is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Grantee later enters into an agreement or agreements that cause Grantee's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Grantee and the City to be equal to or greater than \$75,000 in the fiscal year.

**16.10 Limitations on Contributions.** Through execution of this Agreement, Grantee acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who 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. Grantee 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. Grantee further acknowledges that the prohibition on contributions applies to each prospective party to the grant; each member of Grantee's board of directors; Grantee's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Grantee; any subgrantee listed in the bid or grant; and any committee that is sponsored or controlled by Grantee. Additionally, Grantee acknowledges that Grantee must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

### **16.11 First Source Hiring Program.**

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

**b. First Source Hiring Agreement.** As an essential term of, and consideration for, any grant or property grant with the City, not exempted by the FSHA, the Grantee shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the grant or property grant. Grantees shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

(1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

(2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

(3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term 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 this Chapter. 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 this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

(6) Set the term of the requirements.

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

(8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

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

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

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

**e. Liquidated Damages.** Grantee agrees:

(1) To be liable to the City for liquidated damages as provided in this section;

(2) To be subject to the procedures governing enforcement of breaches of grants based on violations of grant provisions required by this Chapter as set forth in this section;

(3) That the grantee's commitment to comply with this Chapter is a material element of the City's consideration for this grant; that the failure of the grantee to comply with the grant provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the grantee from the first source hiring process, as determined by the FSHA during its first investigation of a grantee, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the grantee's failure to comply with its first source referral contractual obligations.

(4) That the continued failure by a grantee 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 grantee'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 grantee to comply with its first source referral contractual obligations.

(6) That the failure of grantees to comply with this Chapter, except property grantees, 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. Subgrants.** Any subgrant entered into by Grantee shall require the subgrantee to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

**16.12 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.

**16.13 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.

**16.14 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.

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

**16.16 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.

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

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

**16.18 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.

**16.19 Slavery Era Disclosure. Left Blank by Agreement of the Parties**

**16.20 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.

**16.21. 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.

**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 – Adult Day Care
- Appendix A-1, Services to be Provided – Alzheimer’s Day Care Resource Center
- 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 Subgrantees**

*None*

**Appendix G**  
**Additional Terms**  
**Healthcare Insurance Portability and Accountability Act of 1996 ("HIPAA")**

**1. HIPAA**

The parties acknowledge that CITY is a Covered Entity as defined in the Healthcare Insurance Portability and Accountability Act of 1996 ("HIPAA") and is therefore required to abide by the Privacy Rule contained therein. The parties further agree that CONTRACTOR falls within the following definition under the HIPAA regulations:

- A Covered Entity subject to HIPAA and the Privacy Rule contained therein; or
- A Business Associate subject to the terms set forth in Appendix H;
- Not Applicable, CONTRACTOR will not have access to Protected Health Information.

**2. HUMAN SERVICES AGENCY PRIVACY AND DATA SECURITY POLICIES**

- A. The Human Services Agency (HSA) has developed Privacy and Data Security Policies that encompass all federal and state confidentiality and data security regulations, including HIPAA and local policies.

CONTRACTORS agree to abide by the HSA Privacy and Data Security Policies, unless otherwise granted a waiver from certain policies by HSA, and will be monitored and evaluated on the following criteria:

- B. HSA Privacy Policy is integrated in the program's governing policies and procedures regarding patient privacy and confidentiality.

As Measured by: Evidence that the policy and procedures that abides by the rules outlined in the HSA Privacy Policy have been adopted, approved and implemented.

- C. All staff that handles patient health information are trained (including new hires) and annually updated in the program's privacy/confidentiality policies and procedures.

As Measured by: Documentation exists showing individuals were trained.

- D. A Privacy Notice that meets the requirements of the Federal Privacy Rule (HIPAA) is written and provided to all patients/clients served in their threshold and other languages. If document is not available in the patient's/client's relevant language, verbal translation is provided.

As Measured by: Evidence in patient's/client's chart or electronic file that patient was "noticed." (Examples in English, Cantonese, Vietnamese, Tagalog, Spanish, Russian will be provided.)

- E. A Summary of the above Privacy Notice is posted and visible in registration and common areas of treatment facility.

As Measured by: Presence and visibility of posting in said areas. (Examples in English, Cantonese, Vietnamese, Tagalog, Spanish, Russian will be provided.)



- F. Each disclosure of a patient's/client's health information for purposes other than treatment, payment, or operations is documented.

As Measured by: Documentation exists

- G. Authorization for disclosure of a patient's/client's health information is obtained prior to release (1) to providers outside the HSA Safety Net or (2) from a substance abuse program.

As Measured by: An authorization form that meets the requirements of the Federal Privacy Rule (HIPAA) is signed and in patient's/client's chart/file

### **3. THIRD PARTY BENEFICIARIES**

No third parties are intended by the parties hereto to be third party beneficiaries under this Agreement, and no action to enforce the terms of this Agreement may be brought against either party by any person who is not a party hereto.

### **4. CERTIFICATION REGARDING LOBBYING**

CONTRACTOR certifies to the best of its knowledge and belief that:

- A. No federally appropriated funds have been paid or will be paid, by or on behalf of CONTRACTOR to any persons for influencing or attempting to influence an officer or an employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the entering into of any federal cooperative agreement, or the extension, continuation, renewal, amendment, or modification of a federal contract, grant, loan or cooperative agreement.
- B. If any funds other than federally appropriated funds have been paid or will be paid to any persons for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, CONTRACTOR shall complete and submit Standard Form -111, "Disclosure Form to Report Lobbying," in accordance with the form's instructions.
- C. CONTRACTOR shall require the language of this certification be included in the award documents for all subawards at all tiers, (including subcontracts, subgrants, and contracts under grants, loans and cooperation agreements) and that all subrecipients shall certify and disclose accordingly.
- D. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## **5. MATERIALS REVIEW**

CONTRACTOR agrees that all materials, including without limitation print, audio, video, and electronic materials, developed, produced, or distributed by personnel or with funding under this Agreement shall be subject to review and approval by the Contract Administrator prior to such production, development or distribution. CONTRACTOR agrees to provide such materials sufficiently in advance of any deadlines to allow for adequate review. CITY agrees to conduct the review in a manner which does not impose unreasonable delays.

## Appendix H

# BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum (“Addendum”) supplements and is made a part of the contract (“Contract”) by and between the City and County of San Francisco, Covered Entity (“CE”) and Contractor, Business Associate (“BA”).

### RECITALS

- A. CE wishes to disclose certain information to BA pursuant to the terms of the Contract, some of which may constitute Protected Health Information (“PHI”) (defined below).
- B. CE and BA intend to protect the privacy and provide for the security of PHI disclosed to BA pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws.
- C. As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require CE to enter into a contract containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(a) and (e) and 164.504(e) of the Code of Federal Regulations (“C.F.R.”) and contained in this Addendum.

In consideration of the mutual promises below and the exchange of information pursuant to this Addendum, the parties agree as follows:

#### 1. Definitions

- a. **Breach** shall have the meaning given to such term under the HITECH Act and HIPAA Regulations [42 U.S.C. Section 17921 and 45 C.F.R. Section 164.402].
- b. **Breach Notification Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and D.
- c. **Business Associate** shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including, but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.
- d. **Covered Entity** shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.
- e. **Data Aggregation** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- f. **Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- g. **Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.
- h. **Electronic Health Record** shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.

- i. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- j. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- k. **Protected Health Information or PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the part, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].
- l. **Protected Information** shall mean PHI provided by CE to BA or created, maintained, received or transmitted by BA on CE's behalf.
- m. **Security Incident** shall have the meaning given to such term under the Security Rule, including, but not limited to, 45 C.F.R. Section 164.304.
- n. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- o. **Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h) and 45 C.F.R. Section 164.402.

## 2. **Obligations of Business Associate**

- a. **Permitted Uses.** BA shall use Protected Information only for the purpose of performing BA's obligations under the Contract and as permitted or required under the Contract and Addendum, or as required by law. Further, BA shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by CE. However, BA may use Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE [45 C.F.R. Sections 164.504(e)(2) and 164.504(e)(4)(i)].
- b. **Permitted Disclosures.** BA shall disclose Protected Information only for the purpose of performing BA's obligations under the Contract and as permitted or required under the Contract and Addendum, or as required by law. BA shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by CE. However, BA may disclose Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (ii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE. If BA discloses Protected Information to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Addendum and used or disclosed only as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BA of any breaches, suspected

breaches, security incidents, or unauthorized uses or disclosures of the Protected Information in accordance with paragraph 2. m. of the Addendum, to the extent it has obtained knowledge of such occurrences [42 U.S.C. Section 17932; 45 C.F.R. Section 164.504(e)].

- c. **Prohibited Uses and Disclosures.** BA shall not use or disclose PHI other than as permitted or required by the Contract and Addendum, or as required by law. BA shall not use or disclose Protected Information for fundraising or marketing purposes. BA shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates [42 U.S.C. Section 17935(a) and 45 C.F.R. Section 164.522(a)(vi)]. BA shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of CE and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2), and the HIPAA regulations, 45 C.F.R. Section 164.502(a)(5)(ii); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to the Contract.
- d. **Appropriate Safeguards.** BA shall implement appropriate safeguards to prevent the use or disclosure of Protected Information other than as permitted by the Contract or Addendum, including, but not limited to, administrative, physical and technical safeguards in accordance with the Security Rule, including, but not limited to, 45 C.F.R. Sections 164.308, 164.310, and 164.312. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. BA shall comply with the policies and procedures and documentation requirements of the Security Rule, including, but not limited to, 45 C.F.R. Section 164.316. [42 U.S.C. Section 17931]
- e. **Business Associate's Subcontractors and Agents.** BA shall ensure that any agents and subcontractors that create, receive, maintain or transmit Protected Information on behalf of BA, agree in writing to the same restrictions and conditions that apply to BA with respect to such Protected Information and implement the safeguards required by paragraph 2.d. above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. BA shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. Sections 164.530(f) and 164.530(e)(1)).
- f. **Accounting of Disclosures.** Within ten (10) calendar days of a request by CE for an accounting of disclosures of Protected Information or upon any disclosure of Protected Information for which CE is required to account to an individual, BA and its agents and subcontractors shall make available to CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935 (c), as determined by CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents and subcontractors for at least six(6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an Electronic Health Record. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. If a patient submits a request for an accounting directly to BA or its agents or subcontractors, BA shall forward the request to CE in writing within five(5) calendar days.

- g. **Governmental Access to Records.** BA shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to CE and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining BA's compliance with HIPAA [45 C.F.R. Section 164.504(e)(2)(ii)(I)]. BA shall provide CE a copy of any Protected Information and other documents and records that BA provides to the Secretary concurrently with providing such Protected Information to the Secretary.
- h. **Minimum Necessary.** BA, its agents and subcontractors shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure. [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)] BA understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."
- i. **Data Ownership.** BA acknowledges that BA has no ownership rights with respect to the Protected Information.
- j. **Notification of Possible Breach.** BA shall notify CE within twenty-four (24) hours of any suspected or actual breach of Protected Information; any use or disclosure of Protected Information not permitted by the Contract or Addendum; any security incident (i.e., any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system) related to Protected Information, and any actual or suspected use or disclosure of data in violation of any applicable federal or state laws by BA or its agents or subcontractors. The notification shall include, to the extent possible, the identification of each individual who unsecured Protected Information has been, or is reasonably believed by the business associate to have been, accessed, acquired, used, or disclosed, as well as any other available information that CE is required to include in notification to the individual, the media, the Secretary, and any other entity under the Breach Notification Rule and any other applicable state or federal laws, including, but not limited, to 45 C.F.R. Section 164.404 through 45 C.F.R. Section 164.408, at the time of the notification required by this paragraph or promptly thereafter as information becomes available. BA shall take (i) prompt corrective action to cure any deficiencies and (ii) any action pertaining to unauthorized uses or disclosures required by applicable federal and state laws. (This provision should be negotiated.) [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)]
- k. **Breach Pattern or Practice by Business Associate's Subcontractors and Agents.** Pursuant to 42 U.S.C. Section 17934(b) and 45 C.F.R. Section 164.504(e)(1)(ii), if the BA knows of a pattern of activity or practice of a subcontractor or agent that constitutes a material breach or violation of the subcontractor or agent's obligations under the Contract or Addendum or other arrangement, the BA must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the BA must terminate the Contract or other arrangement if feasible. BA shall provide written notice to CE of any pattern of activity or practice of a subcontractor or agent that BA believes constitutes a material breach or violation of the subcontractor or agent's obligations under the Contract or Addendum or other arrangement within five (5) days of discovery and shall meet with CE to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

### 3. Termination

- a. **Material Breach.** A breach by BA of any provision of this Addendum, as determined by CE, shall constitute a material breach of the Contract and shall provide grounds for immediate termination of the

Contract, any provision in the Contract to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii)].

- b. Judicial or Administrative Proceedings.** CE may terminate the Contract, effective immediately, if (i) BA is named as defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.
- c. Effect of Termination.** Upon termination of the Contract for any reason, BA shall, at the option of CE, return or destroy all Protected Information that BA and its agents and subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by CE, BA shall continue to extend the protections and satisfy the obligations of Section 2 of this Addendum to such information, and limit further use and disclosure of such PHI to those purposes that make the return or destruction of the information infeasible [45 C.F.R. Section 164.504(e)(ii)(2)(J)]. If CE elects destruction of the PHI, BA shall certify in writing to CE that such PHI has been destroyed in accordance with the Secretary's guidance regarding proper destruction of PHI.
- d. Disclaimer**

CE makes no warranty or representation that compliance by BA with this Addendum, HIPAA, the HITECH Act, or the HIPAA Regulations will be adequate or satisfactory for BA's own purposes. BA is solely responsible for all decisions made by BA regarding the safeguarding of PHI.

#### **4. Amendment to Comply with Law.**

The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Contract or Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations and other applicable state or federal laws relating to the security or confidentiality of PHI. The parties understand and agree that CE must receive satisfactory written assurance from BA that BA will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable laws. CE may terminate the Contract upon thirty (30) days written notice in the event (i) BA does not promptly enter into negotiations to amend the Contract or Addendum when requested by CE pursuant to this section or (ii) BA does not enter into an amendment to the Contract or Addendum providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

#### **5. Reimbursement for Fines**

In the event that CE pays a fine to a state or federal regulatory agency based on an impermissible use or disclosure of PHI by BA or its subcontractors or agents, then BA shall reimburse CE in the amount of such fine within thirty (30) calendar days.

**APPENDIX A-1 --SERVICES TO BE PROVIDED BY GRANTEE**

**INSTITUTE ON AGING**

**July 1, 2014 – June 30, 2015**

**ALZHEIMER’S DAY CARE RESOURCE CENTER (ADCRC)**

**I. Purpose**

The purpose of this grant is to assist individuals with Alzheimer’s and related dementia to function at the highest possible level; to provide respite care for families and caregivers; to assist caregivers by providing information, counseling, and care planning; to establish and/or assist support groups; to train students, professionals, and caregivers; and to disseminate information to families, caregivers, professionals, and the public about Alzheimer’s disease and related disorders.

**II. Definitions**

Alzheimer’s Day  
Care Resource

Center (ADCRC) Alzheimer's Day Care Resource Centers (ADCRC) are community-based programs that serve persons with Alzheimer’s Disease or a related dementia, particularly those in the moderate to severe stages, whose care needs and behavioral problems make it difficult for them to participate in other day care programs. The operation of an ADCRC shall take place within the framework of a licensed Adult Day Health Care Center or Adult Day Care Center

DAAS Department of Aging and Adult Services

Disability A condition attributable to mental or physical impairment, or a combination of mental and physical impairments including hearing and visual impairments, that results in substantial functional limitations in one (1) or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, economic self-sufficiency, cognitive functioning, and emotional adjustment.

Frail An older individual that is determined to be functionally impaired because the individual either: (a) Is unable to perform at least two activities of daily living, including bathing, toileting, dressing, feeding, breathing, transferring and mobility and associated tasks, without substantial human assistance, including verbal reminding, physical cueing or supervision. (b) Due to a cognitive or other mental impairment, requires substantial supervision because the older individual behaves in a manner that poses a serious health or safety hazard to the individual or to others.



Grantee	Institute on Aging-Ruth Ann Rosenberg Adult Day Services
HSA	Human Services Agency of City and County of San Francisco
OCM	Office of Contract Management, San Francisco Human Services Agency
OOA	Office on the Aging

### **III. Target Population**

Individuals 60 years of age or older or individuals between 18 and 59 years of age that are living with disabilities. According to the federal mandates of the Older Americans Act, services must target clients who are members of one or more of the following target groups that have been identified as demonstrating the greatest economic and social need. In particular:

- Low-income
- Non or limited –English speaking
- Minority
- Frail
- Lesbian/Gay/Bisexual/Transgender

### **IV. Eligibility for ADCRC Services**

- 1) A resident of San Francisco
- 2) An individual aged 18 and older with Alzheimer’s disease and related dementia disorders, particularly in the moderate to severe stages, whose care needs and behavioral problems may make it difficult to participate in existing care programs.

### **V. Location and Time of Services**

The details of the sites and operation hours will be attached in the Site Chart of the certified grant.

### **VI. Description of Services**

The ADCRC will provide services necessary to meet physical and psychological needs of participants; develop a program and maintain a physical environment suitable to caring for participants with conditions associated with dementia and provide respite for the participant’s primary caregivers; develop, organize and provide training for professionals and other persons caring for these individuals; disseminate information to the public regarding Alzheimer’s disease and related disorders; be a resource to caregivers and to the community; and provide family support groups.

The ADCRC will also provide in-service training a minimum of six (6) times per year to staff and volunteers working at the site. Training for professionals will be conducted at least four (4) times a year through student intern programs, presentations to specific professional groups and professional service providers in the community. At least one annual presentation will be conducted alone or jointly with other community providers, to the community, lay public, and caregivers. Support and training for caregivers will be conducted no less than twelve (12) times a year, through caregiver support groups or

through other caregiver activities, by staff associated with the ADCRC, or by arrangement with other support group providers in the local community.

**VII. Units of Service and Definitions ( Annually)**

During the term of the grant, the Grantee will provide service to the indicated number of consumers with the indicated number of units of service.

65 # of unduplicated consumers to be served:

**Day Care:**

To provide specialized dementia-specific services by trained staff and volunteers in an environment designed to accommodate participants with moderate to severe stages of Alzheimer's Disease or related dementia

UNIT: One Participant Day

UNIT: **3670**

**Support Group:**

To provide training and support (minimum twelve [12] times per year) for caregivers of persons with Alzheimer's Disease or related dementia.

UNIT: One Session

UNIT: **12**

**Counseling (Families of Consumers):**

To provide counseling to families of consumers with Alzheimer's Disease or related dementia by referring caregivers to specific resources that address in depth dementia-related issues.

UNIT: One Hour

UNIT 185

**Community Education:**

To educate the community, lay public, and caregivers alone or jointly with other community providers (minimum one [1] time per year) about Alzheimer's disease or related dementia.

UNIT: One Session

UNIT: **3,**

**Volunteers:**

To provide trained unpaid ADCRC staff to help with the provision of services.

UNIT: One Volunteer

UNIT: **100**

**Volunteers Time:**

To provide opportunities for trained volunteers to perform staff related duties at the ADCRC site by trained volunteers.

UNIT: One Hour

UNIT: 1400

**In-Service Training Sessions:**

To provide in-service training sessions (minimum six per year) to staff and the program and the participants; training by experienced staff or outside trainers and professionals regarding Alzheimer's disease and related dementias, behavior management; etc; or training devoted to team building and problem solving.

UNIT: One Session

UNIT: 6

**Training for Professionals/Interns:**

On-site training (minimum four per year) for professionals through student intern programs, or presentations by professional staff at workshops, conferences etc on issues pertaining to hands-on care, behavior management, communication methods etc.

UNIT: One Session

UNIT: 6

The Grantee will have to be compliant with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy and security rules. Specific compliance requirements will be included in Appendices G & H to the certified grant agreement.

**VIII. Service Objectives**

On an annual basis:

Grantee will provide ADCRC service to 65 Unduplicated clients

Grantee will provide 3,670 participant days

Grantee will provide 12 support groups

Grantee will provide 185 counseling hours

Grantee will provide 3 community education sessions

Grantee will provide 100 number of volunteers

Grantee will provide 1,400 volunteer hours

Grantee will provide 6 in-service sessions

Grantee will provide 6 training sessions for professionals/interns

**IX. Outcome Objectives**

All participants should receive a consumer satisfaction survey.

- At least 65% of the consumers or caregivers will return the annual consumer satisfaction survey
- At least 85% of the consumers or caregivers indicated excellent or good in rating the quality of services the participants received at the ADCRC.
- At least 85% of caregivers indicated excellent or good in rating the quality respite services they received from the ADCRC.
- At least 85% of caregivers indicated excellent or good in rating the quality of information, and counseling services they received from the ADCRC
- At least 70% of consumers enrolled in the ADCRC will avoid institutionalization as evidence by being in the adult day program from their date of enrollment to the end of the

fiscal year. this is impacted by financial factors, family dynamics and other factors so an institutionalization may be for any number of reasons not having to do with attending a day program

## **X. Monitoring Activities**

- A. Program Monitoring: Program monitoring will include review of compliance to specific program standards or requirements; client eligibility and targeted mandates, back up documentation for the units of service and all reporting, and progress of service and outcome objectives; how participant records are collected and maintained; reporting performance including monthly service unit reports on CA Getcare, maintenance of service unit logs; agency and organization standards, which include current organizational chart, evidence of provision of training to staff regarding the Elder Abuse Reporting; program operation, which includes a review of a written policies and procedures manual of all OOA funded programs, written project income policies if applicable, grievance procedure posted in the center/office, and also given to the consumers who are homebound, hours of operation are current according to the site chart; a board of directors list and whether services are provided appropriately according to Sections VI and VII.
  
- 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.

## **XI. Reporting Requirements**

- A. Grantee will enter into CA-GetCare the consumer data including the Intake Form by the required due date as specified by the OOA.
- B. Grantee will enter into CA-GetCare all service unit data as aggregate service units by the 5<sup>th</sup> working day of the month for the preceding month.
- C. Grantee will provide a monthly report of number of unduplicated clients served and number of hours of day care services provided as described in Section VIII Service Objectives. Grantee will enter the monthly metrics in the Contracts Administration, Reporting & Billing Online (CARBON) database by the 15<sup>th</sup> of the following month.
- D. Grantee will provide an annual report summarizing the contract activities, referencing the tasks as described in Section VIII & IX – Service and Outcome Objectives. This report will also include accomplishments and challenges encountered by the Grantee. Grantee will enter the annual metrics in the CARBON database by the 15<sup>th</sup> of the month following the end of the program year.
- E. Grantee will develop and maintain with OOA's approval, an updated Site Chart (using OOA's format) with details about the adult day services program.
- E. Grantee will provide other reports as requested.
- F. Apart from the on-line reporting via CAGetCare, and reports requested to be sent via e-mail to the Program Analyst and/or Contract Manager, Monthly and Annual Reports will be entered into the Contracts Administration Reporting and Billing On-line (CARBON) system. For assistance with reporting requirements or submission of reports, contact:

Justin Chan  
Contracts Manager/HSA  
P.O. Box 7988  
San Francisco, CA 94120

Denise Cheung  
DAAS, Office on the Aging  
P.O. Box 7988  
San Francisco, CA 94120

**HUMAN SERVICES AGENCY CONTRACT BUDGET SUMMARY  
 BY PROGRAM**

Contractor's Name		Contract Term	
Institute on Aging		7/1/14-6/30/15	
(Check One)    New <input type="checkbox"/> Renewal <input checked="" type="checkbox"/> Modification <input type="checkbox"/>			
If modification, Effective Date of Mod.		No. of Mod.	
Program: <b>ADCRC</b>			
Budget Reference Page No.(s)			Total
Program Term	7/1/14-6/30/15		7/1/14-6/30/15
<b>Expenditures</b>			
Salaries & Benefits	\$73,146		\$73,145
Operating Expense	\$0		\$0
<b>Subtotal</b>	\$73,146		\$73,145
Indirect Percentage (%)	15%		\$0
Indirect Cost (Line 16 X Line 17)	\$10,972		\$10,972
Capital Expenditure	\$0		\$0
Total Expenditures	\$84,118		\$84,118
<b>HSA Revenues</b>			
General Fund	\$84,118		\$84,118
<b>TOTAL HSA REVENUES</b>	\$84,118		\$84,118
<b>Other Revenues</b>			
Project Income			
In-Kind			
Fund-Raising			
Contributions/Grants			
IOA Subsidy			-
Total Revenues	\$84,118		\$84,118
Full Time Equivalent (FTE)	1.36		
Prepared by: Michael Thompson	Telephone No.: (415) 750-4155		11-Mar-14
HSA-CO Review Signature: _____			
<b>HSA #1</b>			<b>11/15/2007</b>

## APPENDIX A –SERVICES TO BE PROVIDED BY GRANTEE

Effective July 1, 2014 to June 30, 2017

### CASE MANAGEMENT INSTITUTE ON AGING

#### I. Purpose

The purpose of this grant is to provide assistance in the form of access or care coordination in circumstances where the older person and adult with disabilities and/or caregivers are experiencing a diminished capacity to function including personal conditions or other characteristics which require the provision of services by formal and/or informal service providers. Activities of Case management include assessing needs, developing care plans, authorizing services, arranging services, coordinating the provision of services among providers, follow-up monitoring and reassessment, discharge and termination.

#### II. Definitions

HSA Human Services Agency of the City and County of San Francisco

DAAS Department of Aging and Adult Services

Frail An older individual is determined to be functionally impaired because the individual either: (a) Is unable to perform at least two activities of daily living, including bathing, toileting, dressing, feeding, breathing, transferring and mobility and associated tasks, without substantial human assistance, including verbal reminding, physical cueing or supervision. (b) Due to a cognitive or other mental impairment, requires substantial supervision because the older individual behaves in a manner that poses a serious health or safety hazard to the individual or to others.

Senior Person who is 60 years or older.

Adult with Disability Person 18 years of age or older living with a disability.

Long-term services Ongoing case management services designed to prevent consumer from placement in an institution

Minority An ethnic person of color who is any of the following:  
a) Black – a person having origins in any of the Black racial groups of Africa, b) Hispanic – a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin regardless of race, c) Asian/Pacific Islander – a person whose origins are from India, Pakistan or Bangladesh, Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, or the United States Territories of the Pacific including the Northern Marianas, d) American Indian/Alaskan Native – an American Indian, Eskimo, Aleut, or Native Hawaiian. Source: California Code of Regulation Sec. 7130.

### **III. Target Population**

Individuals 60 years of age or older or individuals between 18 and 59 years of age that are living with disabilities. Services must target clients who are members of one or more of the following target groups that have been identified as demonstrating the greatest economic and social need. In particular:

- At an income level of 400% of poverty or less
- Non or limited –English speaking
- Minority
- Frail
- Lesbian/Gay/Bisexual/Transgender

### **IV. Eligibility for Case Management Services**

In order to obtain case management services, an individual must meet the following criteria:

- A resident of San Francisco
- Aged 60 and above, or
- Aged 18 to 59 with a disability
- At an income level of 400% of poverty or less
- Not currently receiving duplicative Case Management services
- Has a need for Case Management and is willing to participate in the program.
- At risk of premature institutionalization
  - In order to be considered “at risk,” an individual must meet at least one of the following conditions:
    - 1) impairment in one or more areas of Activities of Daily Living (ADL); or
    - 2) two or more Instrumental Activities of Daily Living (IADL’s); or
    - 3) unable to manage his/her own affairs due to emotional and/or cognitive impairment; or
    - 4) impaired by virtue of a significant event or circumstance that has occurred within the past 12 months.

### **V. Location and Time of Services**

The details of the sites and operation hours are as attached in the Site Chart (Appendix F).

### **VI. Description of Services**

- A. The Grantee shall provide case management service to the clients eligible for the service as described in the OOA Case Management Standards (OOA Policy Memorandum #39), which include Agency Standards, Case Management Supervisor Standards, Case manager Standards, and the Core Elements of case management:

The case management process includes at a minimum the following:

- The Intake/Screening process—Intake begins with an individual calling the case management provider to request assistance. The information completed by the case manager helps determine presumptive eligibility of the potential client and is used to collect demographic and other information.
- Enrollment---Enrollment of the client into the program includes explanation of the range of services available, and clients’ release authorizing the case manager to release information from/to individuals or agencies relating to health, mental health, medical benefits, income assistance, social or other services.

- Comprehensive assessment---The case manager begins assisting the client by completing an in-depth assessment of each person's situation in the home. Based on that assessment, the client, the family, and the case manager decide what the client needs and make a plan to meet those needs.
  - Care-Planning---This plan may include linking the individuals and their families to existing community services, such as transportation, meals, in-home care, housing assistance and adult day care programs. The plan may also focus on obtaining adaptive devices, such as ramps, bath benches, medi-sets, and grab bars. Assistance, such as home repairs, counseling, or telephone reassurance, may be arranged to help the clients remain independent.
  - Reassessment---A formal reassessment must be conducted at least annually.
  - Monitoring and follow-up--- At a minimum, a quarterly face-to-face contact with each client is required. Phone calls will be made to the client during the months that no face-to-face contact occurs.
  - Client Termination---Caseload turnover is an integral component of case management. Clients are subject to termination under the following circumstances: case management services completed, client's condition improved or stabilized, and the client is no longer eligible for case management; client requires higher level of service, such as Multi-Purpose Senior Services Program (MSSP), a federal funded program; client requires long-term institutionalization; client's needs exceed the case management provider's capacity; client no longer desires services; client moved out of area; client died; and other reasons.
- B. Client Caseload: The Grantee shall ensure that one full time equivalent case manager should target handling a monthly caseload of 50, with the flexibility of 20% plus or minus this number. This is relevant to clients that are served relatively long-term. For clients that require lots of crisis intervention such as post hospitalization case management or elder/adult abuse, the caseload number can be considered at a level of 35 to 50 active cases.
- C. As the OOA Case management Standards are the minimum standards, the Grantee must establish its own Agency's Policies and Procedures to meet the needs of the clientele that it is serving.
- D. The Grantee will have to be compliant with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy and security rules. For specific compliance requirements, please refer to Appendices G & H to the Grant Agreement.

## VII. Contractor Responsibilities/Units of Service and Definitions

During the term of the grant, the Grantee will provide service to the indicated number of consumers with the indicated number of units of service.

**Total number of unduplicated consumers to be served each year: 56**



**Comprehensive Assessment****# UNITS OF SERVICE**

To collect information about a consumer with multiple needs (social, environmental, physical or mental) and determine the necessary supportive or other appropriate services to meet those needs. Time used in conducting the home-visit (including travel) and completion of all paper work are to be included.

UNIT: One Hour

UNITS: 72

**Care Planning**

To develop an individualized plan of care and services under a Case Management system based on a comprehensive assessment of the consumer's condition and/or resources. Time used in writing the care plan and related consultation will be included.

UNIT: One Hour

UNITS: 60

**Service Authorization or Arrangement**

To obtain services according to an individualized care plan by coordinating existing services, authorization for payment of services, or purchase of services. Time used in making phone calls in liaising with other service providers, and filling-out applications will be included.

UNIT: One Hour

UNITS: 600

**Case Monitoring**

To determine quality and effectiveness of services provided to a consumer according to an individualized care plan; to maintain periodic consumer contact to determine if change has occurred; and to take appropriate action as necessary. Time spent in calling the consumers/caregivers and in conducting home-visits will be included.

UNIT: One Hour

UNITS: 768

**VIII. Service Objectives**

- Grantee will provide case management services to a total of 56 unduplicated consumers.
- Grantee will provide a total of 72 hours of comprehensive assessment to the consumers.
- Grantee will provide a total of 60 hours of care planning for the consumers.
- Grantee will provide a total of 600hours of care coordination and arrangement for the consumers.
- Grantee will provide a total of 768 hours of case monitoring for the consumers

**IX. Outcome Objectives**

- At least seventy percent (70%) of consumers enrolled in the case management program will avoid institutionalization as evidenced by the annual report that documents this finding.
- At least thirty five per cent (35%) of consumers will respond to the annual consumer satisfaction survey.

- At least seventy per cent (70%) of consumers responding to the annual consumer satisfaction survey will be satisfied with the service and find it beneficial to them.

**X. Reporting and Other Requirements**

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

- A. The grantee will enroll the clients into the CA GetCare database (<https://ca.getcare.com/caprovider/>), and enter all the required data in the Case Management Module, including medication list, assessment, progress notes, service plan etc.
- B. The grantee will enter into the CA GetCare Service Unit section all the units of service by the 5th working day of the month for the preceding month.
- C. Monthly reports must be entered into the Contracts Administration, Reporting, and Billing Online (CARBON) system regarding the following:
  - 1. Number of unduplicated consumers served during the month.
  - 2. Number of units of comprehensive assessment provided during the month
  - 3. Number of units of care planning provided during the month.
  - 4. Number of units of service authorization or arrangement provided during the month.
  - 5. Number of units of case monitoring provided during the month.
- D. Grantee will provide an annual report summarizing the contract activities, referencing the tasks as described in Section VIII & IX- Service and Outcome Objectives. This report will also include accomplishments and challenges encountered by the Grantee. Grantee will enter the annual metrics in the CARBON database by the 15th of the month following the end of the program year on an annual basis:
  - a) The percentages of consumers enrolled in the case management program have avoided institutionalization
  - b) The percentages of consumers responding to the annual consumer satisfaction survey have been satisfied with the service and find it beneficial to them.
- E. Grantee shall submit Community Services Block Grant (CSBG) time study to HSA/DAAS for the months of February, May, August and November. The time study is due on the 10<sup>th</sup> day following the time study month and shall be entered on line to this website link: <https://calmaa.hfa3.org/signin>
- F. Grantee shall issue a Fiscal Closeout Report at the end of the fiscal year. The report is due to HSA no later than July 31 each grant year. This report must be submitted to the CARBON system.
- G. Grantee will provide an annual consumer satisfaction survey report to OOA by March 15 each grant year.
- H. Grantee shall develop and deliver ad hoc reports as requested by HSA.
- I. Grantee is required to attend all mandatory case management training or meetings or other training as needed.

- J. Apart from reports requested to be sent via e-mail to the Program Analyst and/or Contract Manager, all other reports should be sent to the following addresses:

Monte Cimino, Program Analyst  
DAAS, Office on the Aging  
PO Box 7988  
San Francisco, CA 94120  
Email address: monte.ciminosfgov.org,

Tahir Shaikh, Contracts Manager  
Human Services Agency  
PO Box 7988  
San Francisco, CA 94120

Email address: tahir.shaikh@sfgov.org,

## **XI. Monitoring Activities**

- A. Program Monitoring: Program monitoring will include review of the participants' record entered into the Case Management module, compliance with specific program standards or requirements as stated in the OOA Policy Memorandum #39, Case Management Standards; client eligibility and targeted mandates, back up documentation for the units of service and all reporting, and progress of service and outcome objectives; how participant records are collected and maintained; reporting performance including monthly service unit reports on CA GetCare, maintenance of service unit logs; agency and organization standards, which include current organizational chart, evidence of provision of training to staff regarding the Elder Abuse Reporting; program operation, which includes a review of a written policies and procedures manual of all OOA-funded programs, written project income policies if applicable, grievance procedure posted in the center/office, and also given to the consumers who are homebound, hours of operation are current according to the site chart; a board of directors list and whether services are provided appropriately according to Sections VI and VII.
- 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, the current board roster and selected board minutes for compliance with the Sunshine Ordinance, and HIPAA compliance.



## Appendix C – Method of Payment

- I. In accordance with Section 5 of the Grant Agreement, payments shall be made for actual costs incurred and reported for each month. Under no circumstances shall payment exceed the amount set forth in Section 5 Compensation of the Agreement.
- II. Grantee will submit all bills, invoices and related documentation in the format specified by SFHSA within 15 days after the month of service to SFHSA’s web-based Contracts Administration, Reporting, and Billing Online (CARBON) System at: <https://contracts.sfhsa.org>  
  
Grantee may submit bills, invoices and related documentation in the format specified by SFHSA via paper or email only upon special permission by their assigned Contract Manager.
- III. Grantee must sign up to receive payments electronically via Automated Clearing House (ACH). Remittance information will be provided through Paymode-X. Additional information and sign up is available at: <http://www.sfgov.org/ach>
- IV. The Executive Director or CFO must submit a letter of authorization designating specific users who will have access to CARBON to electronically submit and sign for invoices, budget revision requests, program reports, and view other information that is in CARBON.
  - A. Submittal of the invoice by designated authorized personnel with proper login credentials constitutes an electronic signature and certification of the invoice.
  - B. Authorized personnel with CARBON login credentials shall not share or internally reassign logins.
  - C. Grantee shall notify SFHSA Contract Manager immediately regarding any need for the restriction or termination of a previously authorized CARBON login.
- V. Invoices shall include actual expenditures incurred during the month, unless otherwise specified.
  - A. The invoice supplied shall include the total dollar amount claimed for the month.
  - B. There shall be no variance from the line item budget submitted which adversely affects program performance as contained in the Grantee’s proposal and specified in the grant.
  - C. The invoice shall show by line item:
    1. Budgeted amount (per approved grant budget or modification)
    2. Expenses for invoice period
    3. Expenses year-to-date
    4. % of budget expended
    5. Remaining balance
    6. Adjustments, including advance payment recovery
    7. Program income when specified in the grant agreement.
  - D. Personnel expenditures will show same line item categories by position detail. Detail will show name of employee, position name, %FTE and budgeted salary.
  - E. With written approval from SFHSA Program/Contract Manager, Grantee may adjust items within the existing budget of the grant in accordance with SFHSA Office of Contract Management Policy for Budget Line Item Revisions.
  - F. Supporting Documentation, except as discussed below need not be submitted with the invoice. However, Grantee must keep and make available as requested such supporting documentation for all expenditures for which reimbursement is requested for all costs so claimed. All charges incurred shall be due and payable only after services have been rendered, except as stated otherwise. Supporting documentation must be uploaded into CARBON and submitted along with the invoice.

- Documentation should be submitted with the invoice for all payroll expenses paid to budgeted personnel for the period covered by the invoice. Payroll information can be from a payroll service or a payroll ledger from the Grantee's accounting system
- For any and all non-recurring expenditures (e.g. equipment purchases/capital upgrades and building repair and upgrades) and/or items that exceed \$5,000, Grantee shall supply back-up documentation in the form of a paid invoice(s).
- Indirect costs shall not be applied to non-reoccurring expenses.
- All subcontracted services must be documented by submission of the subcontractor's paid invoice, regardless of dollar amount.
- If this grant agreement contains any Pass-Through funding requiring specific expense documentation from the source agency, Federal, State, Private or other then the following documentation shall also be included with each invoice submission:

Funding Agency: \_\_\_\_\_ CFDA or other Identification #: \_\_\_\_\_

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

- VI. Following SFHSA verification of submitted Invoice with required documentation of incurred expenses via CARBON, SFHSA will authorize payment within 10 business days after receipt of the invoice.
- VII. Within 45 days after the end of the grant period, Grantee shall submit a final report reflecting actual expenditures, which will be supported by the Grantee's accounting records. If a refund is due SFHSA, it will be submitted with the final report.
- VIII. Advances or prepayments are allowable in order to meet the Grantee cash flow needs in certain unique circumstances. The Agency, at its sole discretion, shall make available to the Grantee upon written request an advance amount not to exceed two (2) months or 1/6<sup>th</sup> of the total annualized grant award, or as mutually agreed upon. The advanced sum shall be deducted from the Grantee's monthly invoices at an equal rate each month that will enable repayment by the tenth month of the fiscal year. For a twelve-month grant the rate of repayment of the advance will be 1/10<sup>th</sup> per month from July to April. Requests for advance payment will be granted on a case-by-case basis and are not intended to be a regular "automatic" procedure. Approval will be a consensus of Program and Contract Staff.

Once the grant is certified, the Grantee, prior to distribution of any advanced payment, must fulfill the following conditions:

- 1. All contractual compliance requirements must be current, i.e., reports submitted and approved, corrective actions resolved, business tax and insurance certificates in place, prompt and fully documented billings.

2. The Grantee shall submit a written request with a narrative justification that fully describes the unique circumstances to the Program Manager and Contract Manager for review and approval.
  3. Final invoice from the preceding fiscal year must be received prior to advance distribution.
- IX. Timely Submission of Reports – If reports/documents are required, Grantee shall submit these reports prior to submitting invoices. Failure to submit required reports/documents in CARBON by specified deadlines may result in withholding of grant payments.

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

**GRANT AGREEMENT**

between

CITY AND COUNTY OF SAN FRANCISCO

and

**INSTITUTE ON AGING**

**THIS GRANT AGREEMENT** (this “Agreement”) is made this **1<sup>st</sup>** day of **July**, 2014, in the City and County of San Francisco, State of California, by and between **Institute on Aging, 3575 Geary Blvd, San Francisco, CA 94118** (“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) seeking a grant, for the purpose of funding the matters set forth in the Grant Plan (as hereinafter defined); and summarized briefly as follows:

**To provide Case Management;** and

**WHEREAS**, the Grant is funded with Federal dollars, CFDA #93.041; and

**WHEREAS**, approval for said Agreement was obtained when the Civil Service Commission approved Grant Number **4080-10/11** on **March 7, 2011**; and

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

**NOW, THEREFORE**, in consideration of the promises 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.

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

(n) “**HRC**” shall mean the Human Rights Commission of 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.

**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 “subgrantee,” “successor” or “assign” herein refers only to a subgrantee (“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 21.10-1 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, 2014** 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, 2015**.

### **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 subgrantees 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 **Two Hundred Ninety Seven Thousand, Five Hundred Fifty Five** Dollars (\$**297,555**) for the period **from July 1, 2014 to June 30, 2017, plus any contingent amount authorized by City and certified as available by the Controller.**

**Contingent amount:** Up to **Twenty Nine Thousand, Seven Hundred Fifty Five** Dollars (\$**29,755**) for the period from **July 1, 2014 to June 30, 2017 (Y1), may be available, in the City's sole discretion, as a contingency subject to authorization by the City and certified as available by the Controller.**

The maximum amount of Grant Funds disbursed hereunder shall not exceed **Three Hundred Twenty Seven Thousand, Three Hundred Ten** Dollars (\$**327,310**) for the period from **July 1, 2014 to June 30, 2017 (Y1).**

Grantee understands that, of the maximum dollar disbursement listed in Section 5.1 of this Agreement, **the amount shown as the Contingent Amount may not be used in Program Budgets attached to this Agreement as Appendix B, and is not available to Grantee without a revision to the Program Budgets of Appendix B specifically approved by Grant Agreement Administrator.** Grantee further understands that no payment of any portion of this contingency amount will be made unless and until such funds are certified as available by Controller. Grantee agrees to fully comply with these laws, regulations, and policies/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 OMB Circular A-122, 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 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 Disallowance and Single Audit Requirements:** If Grantee claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States 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. 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. Single Audit Requirements: Grantees that

expend \$500,000 or more in a year from any and all Federal awards shall have a single audit conducted in accordance with OMB Circular A-133. Grantees that expend less than \$500,000 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.

## **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 OMB Circular A-133, 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, 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.** Pursuant to San Francisco Administrative Code §21.35, any grantee, subgrantee or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. A grantee, subgrantee or consultant will be deemed to have submitted a false claim to the City if the grantee, subgrantee 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.** Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

(a) Grantee shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty (30) days following the date on which this Agreement becomes effective (unless Grantee has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Grantee; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

(b) Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Grantee of the terms of this Agreement. If, within thirty (30) days after Grantee receives written notice of such a breach, Grantee fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Grantee fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

(c) Any Subgrant entered into by Grantee shall require the subgrantee to comply, as to the subgrantee's Eligible Employees, with each of the terms of this section.

(d) Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

## **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 Subgrants.** 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 and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Grantee or loss of or damage to property, arising directly or indirectly from Grantee's performance of this Agreement, including, but not limited to, Grantee's use of facilities or equipment provided by City or others,

regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Grantee, its subcontractors or either's agent or employee. 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. In addition to Grantee's obligation to indemnify City, Grantee specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Grantee by City and continues at all times thereafter. Grantee shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement. Grantee shall also indemnify, defend, and hold City harmless from all suits or claims or administrative proceedings for breaches of federal and/or state law regarding the privacy of personally identifying information, personal health information, electronic records, or related topics, arising directly or indirectly from Grantee's performance of this Agreement, except where such breach is the result of the active negligence or willful misconduct of 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.
- (c) Commercial Automobile Liability Insurance with limits not less than one million dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- (d) Professional liability insurance for negligent acts, errors or omission with respect to professional or technical services, if any, required in the performance of this Agreement with limits not less than one million dollars (\$1,000,000) each claim.

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

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

(e) **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.

(f) **Cross Default.** Grantee defaults under any other agreement between Grantee and City (after expiration of any grace period expressly stated in such agreement).

(g) **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.

(h) **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.

## 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 this Chapter 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 subcontractors, and all agents and employees of Contractor and any subcontractor 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 subcontractors 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.

## **ARTICLE 13 ASSIGNMENTS AND SUBGRANTING**

**13.1 No Assignment by Grantee.** Grantee shall not, either directly or indirectly, assign, transfer, hypothecate, subgrant 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 Subgranting.** If Appendix E lists any permitted subgrantees, then notwithstanding any other provision of this Agreement to the contrary, Grantee shall have the right to subgrant 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 subgrant or delegate the whole of the Grant Plan. Grantee may subgrant 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 subgrantee 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 subgranted 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 subgrantee 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 Subgrant.** Each subgrant 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 subgrant shall incorporate all of the terms of this Agreement, insofar as they apply to the subgranted portion of the Grant Plan. Without limiting the scope of the foregoing, each subgrant shall provide City, with respect to the s 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 subgrant 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 GRANTEE 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 Grant Management  
P.O. Box7988  
San Francisco, CA 94120-7988  
Facsimile No. 415-557-5679

If to Grantee: Institute on Aging  
3330 Geary Blvd, 2<sup>nd</sup> Floor  
San Francisco, CA 94118  
Attn: J.Thomas Briody  
Facsimile No. (415) 750-4179  
Email: tbriody@ioaging.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 Left Blank by Agreement of the Parties

### 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.** As a condition to this Agreement, Grantee shall execute the “Chapter 12B Declaration: Nondiscrimination in Grants and Benefits” form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

(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 require 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. Grantee 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 Grantee's obligations under the MCO is set forth in this Section. Grantee is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Grantee to pay Grantee'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 Grantee is obligated to keep informed of the then-current requirements. Any subgrant entered into by Grantee shall require the subgrantee 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 Grantee's obligation to ensure that any subgrantees of any tier under this Agreement comply with the requirements of the MCO. If any subgrantee under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Grantee.

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

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

f. Grantee'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 Grantee fails to comply with these requirements. Grantee agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Grantee's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Grantee 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, Grantee fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Grantee fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, 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. Grantee represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

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

### **16.9. Requiring Health Benefits for Covered Employees**

Grantee agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Grantee shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Grantee chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Grantee is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Grantee's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Grantee if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Grantee fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Grantee fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each

of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subgrant entered into by Grantee shall require the Subgrantee to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Grantee shall notify City's Office of Grant Administration when it enters into such a Subgrant and shall certify to the Office of Grant Administration that it has notified the Subgrantee of the obligations under the HCAO and has imposed the requirements of the HCAO on Subgrantee through the Subgrant. Each Grantee shall be responsible for its Subgrantees' compliance with this Chapter. If a Subgrantee fails to comply, the City may pursue the remedies set forth in this Section against Grantee based on the Subgrantee's failure to comply, provided that City has first provided Grantee with notice and an opportunity to obtain a cure of the violation.

e. Grantee shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Grantee's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

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

g. Grantee shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Grant.

h. Grantee shall keep itself informed of the current requirements of the HCAO.

i. Grantee shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subgrantees and Subtenants, as applicable.

j. Grantee shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Grantee shall allow City to inspect Grantee's job sites and have access to Grantee's employees in order to monitor and determine compliance with HCAO.

l. City may conduct random audits of Grantee to ascertain its compliance with HCAO. Grantee agrees to cooperate with City when it conducts such audits.

m. If Grantee is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Grantee later enters into an agreement or agreements that cause Grantee's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Grantee and the City to be equal to or greater than \$75,000 in the fiscal year.

**16.10 Limitations on Contributions.** Through execution of this Agreement, Grantee acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who 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. Grantee 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. Grantee further acknowledges that the prohibition on contributions applies to each prospective party to the grant; each member of Grantee's board of directors; Grantee's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Grantee; any subgrantee listed in the bid or grant; and any committee that is sponsored or controlled by Grantee. Additionally, Grantee acknowledges that Grantee must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

#### **16.11 First Source Hiring Program.**

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

**b. First Source Hiring Agreement.** As an essential term of, and consideration for, any grant or property grant with the City, not exempted by the FSHA, the Grantee shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the grant or property grant. Grantees shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

(1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

(2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

(3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating

employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term 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 this Chapter. 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 this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

(6) Set the term of the requirements.

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

(8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

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

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

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

**e. Liquidated Damages.** Grantee agrees:

(1) To be liable to the City for liquidated damages as provided in this section;

(2) To be subject to the procedures governing enforcement of breaches of grants based on violations of grant provisions required by this Chapter as set forth in this section;



(3) That the grantee's commitment to comply with this Chapter is a material element of the City's consideration for this grant; that the failure of the grantee to comply with the grant provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the grantee from the first source hiring process, as determined by the FSHA during its first investigation of a grantee, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the grantee's failure to comply with its first source referral contractual obligations.

(4) That the continued failure by a grantee 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 grantee'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 grantee to comply with its first source referral contractual obligations.

(6) That the failure of grantees to comply with this Chapter, except property grantees, 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. Subgrants.** Any subgrant entered into by Grantee shall require the subgrantee to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

**16.12 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.

**16.13 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.

**16.14 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.

## **16.15 Reserved.**

**16.16 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.

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

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

**16.18 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.

**16.19 Slavery Era Disclosure. Left Blank by Agreement of the Parties**

**16.20 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.

**16.21. 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.

**16.22 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, HIPAA 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 Subgrantees**

**None**

**Appendix F**  
**Additional Terms**  
**Healthcare Insurance Portability and Accountability Act of 1996 ("HIPAA")**

**1. HIPAA**

The parties acknowledge that CITY is a Covered Entity as defined in the Healthcare Insurance Portability and Accountability Act of 1996 ("HIPAA") and is therefore required to abide by the Privacy Rule contained therein. The parties further agree that CONTRACTOR falls within the following definition under the HIPAA regulations:

- A Covered Entity subject to HIPAA and the Privacy Rule contained therein; or
- A Business Associate subject to the terms set forth in Appendix E;
- Not Applicable, CONTRACTOR will not have access to Protected Health Information.

**2. HUMAN SERVICES AGENCY PRIVACY AND DATA SECURITY POLICIES**

- A. The Human Services Agency (HSA) has developed Privacy and Data Security Policies that encompass all federal and state confidentiality and data security regulations, including HIPAA and local policies.

CONTRACTORS agree to abide by the HSA Privacy and Data Security Policies, unless otherwise granted a waiver from certain policies by HSA, and will be monitored and evaluated on the following criteria:

- B. HSA Privacy Policy is integrated in the program's governing policies and procedures regarding patient privacy and confidentiality.

As Measured by: Evidence that the policy and procedures that abides by the rules outlined in the HSA Privacy Policy have been adopted, approved and implemented.

- C. All staff that handles patient health information are trained (including new hires) and annually updated in the program's privacy/confidentiality policies and procedures.

As Measured by: Documentation exists showing individuals were trained.

- D. A Privacy Notice that meets the requirements of the Federal Privacy Rule (HIPAA) is written and provided to all patients/clients served in their threshold and other languages. If document is not available in the patient's/client's relevant language, verbal translation is provided.

As Measured by: Evidence in patient's/client's chart or electronic file that patient was "noticed." (Examples in English, Cantonese, Vietnamese, Tagalog, Spanish, Russian will be provided.)

- E. A Summary of the above Privacy Notice is posted and visible in registration and common areas of treatment facility.

As Measured by: Presence and visibility of posting in said areas. (Examples in English, Cantonese, Vietnamese, Tagalog, Spanish, Russian will be provided.)

- F. Each disclosure of a patient's/client's health information for purposes other than treatment, payment, or operations is documented.

As Measured by: Documentation exists

- G. Authorization for disclosure of a patient's/client's health information is obtained prior to release (1) to providers outside the HSA Safety Net or (2) from a substance abuse program.

As Measured by: An authorization form that meets the requirements of the Federal Privacy Rule (HIPAA) is signed and in patient's/client's chart/file

### **3. THIRD PARTY BENEFICIARIES**

No third parties are intended by the parties hereto to be third party beneficiaries under this Agreement, and no action to enforce the terms of this Agreement may be brought against either party by any person who is not a party hereto.

### **4. CERTIFICATION REGARDING LOBBYING**

CONTRACTOR certifies to the best of its knowledge and belief that:

- A. No federally appropriated funds have been paid or will be paid, by or on behalf of CONTRACTOR to any persons for influencing or attempting to influence an officer or an employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the entering into of any federal cooperative agreement, or the extension, continuation, renewal, amendment, or modification of a federal contract, grant, loan or cooperative agreement.
- B. If any funds other than federally appropriated funds have been paid or will be paid to any persons for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, CONTRACTOR shall complete and submit Standard Form -111, "Disclosure Form to Report Lobbying," in accordance with the form's instructions.
- C. CONTRACTOR shall require the language of this certification be included in the award documents for all subawards at all tiers, (including subcontracts, subgrants, and contracts under grants, loans and cooperation agreements) and that all subrecipients shall certify and disclose accordingly.
- D. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## **5. MATERIALS REVIEW**

CONTRACTOR agrees that all materials, including without limitation print, audio, video, and electronic materials, developed, produced, or distributed by personnel or with funding under this Agreement shall be subject to review and approval by the Contract Administrator prior to such production, development or distribution. CONTRACTOR agrees to provide such materials sufficiently in advance of any deadlines to allow for adequate review. CITY agrees to conduct the review in a manner which does not impose unreasonable delays.

## Appendix G

# BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum (“Addendum”) supplements and is made a part of the contract (“Contract”) by and between the City and County of San Francisco, Covered Entity (“CE”) and Contractor, Business Associate (“BA”).

### RECITALS

- A. CE wishes to disclose certain information to BA pursuant to the terms of the Contract, some of which may constitute Protected Health Information (“PHI”) (defined below).
- B. CE and BA intend to protect the privacy and provide for the security of PHI disclosed to BA pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws.
- C. As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require CE to enter into a contract containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(a) and (e) and 164.504(e) of the Code of Federal Regulations (“C.F.R.”) and contained in this Addendum.

In consideration of the mutual promises below and the exchange of information pursuant to this Addendum, the parties agree as follows:

#### 1. Definitions

- a. **Breach** shall have the meaning given to such term under the HITECH Act and HIPAA Regulations [42 U.S.C. Section 17921 and 45 C.F.R. Section 164.402].
- b. **Breach Notification Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and D.
- c. **Business Associate** shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including, but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.
- d. **Covered Entity** shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.
- e. **Data Aggregation** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- f. **Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- g. **Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.
- h. **Electronic Health Record** shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.

- i. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- j. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- k. **Protected Health Information or PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the part, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].
- l. **Protected Information** shall mean PHI provided by CE to BA or created, maintained, received or transmitted by BA on CE's behalf.
- m. **Security Incident** shall have the meaning given to such term under the Security Rule, including, but not limited to, 45 C.F.R. Section 164.304.
- n. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- o. **Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h) and 45 C.F.R. Section 164.402.

## 2. **Obligations of Business Associate**

- a. **Permitted Uses.** BA shall use Protected Information only for the purpose of performing BA's obligations under the Contract and as permitted or required under the Contract and Addendum, or as required by law. Further, BA shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by CE. However, BA may use Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE [45 C.F.R. Sections 164.504(e)(2) and 164.504(e)(4)(i)].
- b. **Permitted Disclosures.** BA shall disclose Protected Information only for the purpose of performing BA's obligations under the Contract and as permitted or required under the Contract and Addendum, or as required by law. BA shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by CE. However, BA may disclose Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (ii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE. If BA discloses Protected Information to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Addendum and used or disclosed only as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BA of any breaches, suspected

breaches, security incidents, or unauthorized uses or disclosures of the Protected Information in accordance with paragraph 2. m. of the Addendum, to the extent it has obtained knowledge of such occurrences [42 U.S.C. Section 17932; 45 C.F.R. Section 164.504(e)].

- c. **Prohibited Uses and Disclosures.** BA shall not use or disclose PHI other than as permitted or required by the Contract and Addendum, or as required by law. BA shall not use or disclose Protected Information for fundraising or marketing purposes. BA shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates [42 U.S.C. Section 17935(a) and 45 C.F.R. Section 164.522(a)(vi)]. BA shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of CE and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2), and the HIPAA regulations, 45 C.F.R. Section 164.502(a)(5)(ii); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to the Contract.
- d. **Appropriate Safeguards.** BA shall implement appropriate safeguards to prevent the use or disclosure of Protected Information other than as permitted by the Contract or Addendum, including, but not limited to, administrative, physical and technical safeguards in accordance with the Security Rule, including, but not limited to, 45 C.F.R. Sections 164.308, 164.310, and 164.312. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. BA shall comply with the policies and procedures and documentation requirements of the Security Rule, including, but not limited to, 45 C.F.R. Section 164.316. [42 U.S.C. Section 17931]
- e. **Business Associate's Subcontractors and Agents.** BA shall ensure that any agents and subcontractors that create, receive, maintain or transmit Protected Information on behalf of BA, agree in writing to the same restrictions and conditions that apply to BA with respect to such Protected Information and implement the safeguards required by paragraph 2.d. above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. BA shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. Sections 164.530(f) and 164.530(e)(1)).
- f. **Accounting of Disclosures.** Within ten (10) calendar days of a request by CE for an accounting of disclosures of Protected Information or upon any disclosure of Protected Information for which CE is required to account to an individual, BA and its agents and subcontractors shall make available to CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935 (c), as determined by CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents and subcontractors for at least six(6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an Electronic Health Record. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. If a patient submits a request for an accounting directly to BA or its agents or subcontractors, BA shall forward the request to CE in writing within five(5) calendar days.

- g. **Governmental Access to Records.** BA shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to CE and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining BA's compliance with HIPAA [45 C.F.R. Section 164.504(e)(2)(ii)(I)]. BA shall provide CE a copy of any Protected Information and other documents and records that BA provides to the Secretary concurrently with providing such Protected Information to the Secretary.
- h. **Minimum Necessary.** BA, its agents and subcontractors shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure. [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)] BA understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."
- i. **Data Ownership.** BA acknowledges that BA has no ownership rights with respect to the Protected Information.
- j. **Notification of Possible Breach.** BA shall notify CE within twenty-four (24) hours of any suspected or actual breach of Protected Information; any use or disclosure of Protected Information not permitted by the Contract or Addendum; any security incident (i.e., any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system) related to Protected Information, and any actual or suspected use or disclosure of data in violation of any applicable federal or state laws by BA or its agents or subcontractors. The notification shall include, to the extent possible, the identification of each individual who unsecured Protected Information has been, or is reasonably believed by the business associate to have been, accessed, acquired, used, or disclosed, as well as any other available information that CE is required to include in notification to the individual, the media, the Secretary, and any other entity under the Breach Notification Rule and any other applicable state or federal laws, including, but not limited, to 45 C.F.R. Section 164.404 through 45 C.F.R. Section 164.408, at the time of the notification required by this paragraph or promptly thereafter as information becomes available. BA shall take (i) prompt corrective action to cure any deficiencies and (ii) any action pertaining to unauthorized uses or disclosures required by applicable federal and state laws. (This provision should be negotiated.) [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)]
- k. **Breach Pattern or Practice by Business Associate's Subcontractors and Agents.** Pursuant to 42 U.S.C. Section 17934(b) and 45 C.F.R. Section 164.504(e)(1)(ii), if the BA knows of a pattern of activity or practice of a subcontractor or agent that constitutes a material breach or violation of the subcontractor or agent's obligations under the Contract or Addendum or other arrangement, the BA must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the BA must terminate the Contract or other arrangement if feasible. BA shall provide written notice to CE of any pattern of activity or practice of a subcontractor or agent that BA believes constitutes a material breach or violation of the subcontractor or agent's obligations under the Contract or Addendum or other arrangement within five (5) days of discovery and shall meet with CE to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

### 3. Termination

- a. **Material Breach.** A breach by BA of any provision of this Addendum, as determined by CE, shall constitute a material breach of the Contract and shall provide grounds for immediate termination of the



Contract, any provision in the Contract to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii)].

- b. Judicial or Administrative Proceedings.** CE may terminate the Contract, effective immediately, if (i) BA is named as defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.
- c. Effect of Termination.** Upon termination of the Contract for any reason, BA shall, at the option of CE, return or destroy all Protected Information that BA and its agents and subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by CE, BA shall continue to extend the protections and satisfy the obligations of Section 2 of this Addendum to such information, and limit further use and disclosure of such PHI to those purposes that make the return or destruction of the information infeasible [45 C.F.R. Section 164.504(e)(ii)(2)(J)]. If CE elects destruction of the PHI, BA shall certify in writing to CE that such PHI has been destroyed in accordance with the Secretary's guidance regarding proper destruction of PHI.
- d. Disclaimer**

CE makes no warranty or representation that compliance by BA with this Addendum, HIPAA, the HITECH Act, or the HIPAA Regulations will be adequate or satisfactory for BA's own purposes. BA is solely responsible for all decisions made by BA regarding the safeguarding of PHI.

#### **4. Amendment to Comply with Law.**

The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Contract or Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations and other applicable state or federal laws relating to the security or confidentiality of PHI. The parties understand and agree that CE must receive satisfactory written assurance from BA that BA will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable laws. CE may terminate the Contract upon thirty (30) days written notice in the event (i) BA does not promptly enter into negotiations to amend the Contract or Addendum when requested by CE pursuant to this section or (ii) BA does not enter into an amendment to the Contract or Addendum providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

#### **5. Reimbursement for Fines**

In the event that CE pays a fine to a state or federal regulatory agency based on an impermissible use or disclosure of PHI by BA or its subcontractors or agents, then BA shall reimburse CE in the amount of such fine within thirty (30) calendar days.

**APPENDIX A – SERVICES TO BE PROVIDED BY GRANTEE  
INSTITUTE ON AGING**

**SUICIDE PREVENTION AND EMOTIONAL SUPPORT SERVICES FOR  
ISOLATED SENIORS AND ADULTS WITH DISABILITIES  
July 1, 2014 – June 30, 2015**

**I. Purpose of Grant**

The purpose of this grant is to maintain or improve the well being of seniors and adults with disabilities who need suicide prevention services, and or emotional support or intervention/assessment due to grief resulting from death of a family member/spouse/other and or other crisis intervention services based on consumer's isolation in the community and or lack of access to other supportive services.

**II. Definitions**

HSA            Human Services Agency of City and County of San Francisco

DAAS           Department of Aging and Adult Services

Grantee        Institute on Aging's Center for Elderly Suicide Prevention & Grief Related Services (CESP)

Senior         Person who is 60 years or older

Adult with Disability    Person 18 years of age or older living with a disability

Disability     A condition attributable to mental or physical impairment, or a combination of mental and physical impairments including hearing and visual impairments, that results in substantial functional limitations in one (1) or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, economic self-sufficiency, cognitive functioning, and emotional adjustment.

Frail            An older individual that is determined to be functionally impaired because the individual either: (a) Is unable to perform at least two activities of daily living, including bathing, toileting, dressing, feeding, breathing, transferring and mobility and associated tasks, without substantial human assistance, including verbal reminding, physical cueing or supervision; (b) Due to a cognitive or other mental impairment, requires substantial supervision because the

older individual behaves in a manner that poses a serious health or safety hazard to the individual or to others.

**III. Target Population**

Individuals 60 years of age or older and individuals between 18 and 59 years of age that are living with disabilities. Services must target clients who are members of one or more of the following target groups that have been identified as demonstrating the greatest economic and social need. In particular:

- Low-income
- Non or limited—English speaking
- Minority
- Frail
- Lesbian/Gay/Bisexual/Transgender

**IV. Eligibility for Suicide Prevention and Emotional Support Services for Seniors and Adults with Disabilities**

- Aged 60 and above, or
- Aged 18 and above with a disability

**V. Description of Services**

Services include but are not limited to crisis intervention, peer counseling, professional psychological counseling, telephone reassurance, grief counseling, support groups, and information and referral services to appropriate agencies. Services are provided via phone at the consumer's home, or the grantee's office.

**VI. Location and Time of Services**

The details of the sites and operation hours will be located in the grant Site Chart (Appendix F).

**VII. Contractor Responsibilities/Units of Service and Definitions**

Number of Unduplicated Consumers: **1000 annually**

During the term of the grants, the Grantee will provide service to the indicated number of consumers with the indicated number of units of service (all service units are in hour).

**Social Services/Other Services**

To conduct intake and assessment and provide service arrangement directly to the individual. Social services may include care planning and case monitoring and follow-up. Social services may also include care planning and case monitoring and follow-up. Social services may also include providing emotional support and counseling to at-risk consumers over the phone or by home visits. **Units: 485 (annual)**

**Crisis Intervention/Suicide Prevention**

Consumers who may be depressed, bereaved, isolated, alone, substance abusers and/or suicidal may call a hotline provided by the Grantee. **Units: 75 (annual)**

**Distress Assessment/Support**

Consumers who are in distress due to chronic, progressive mental health problems will find comfort and support through contacting this program. Follow-up can be provided. **Units: 150 (annual)**

**Emotional Support**

Consumers enrolled in this program will receive outreach calls on a daily basis for emotional support in order to help them remain in their own home. The emotional support call is also a source for health monitoring and assessment.

**Units: 200 (annual)**

**Grief Counseling: Individual Support**

Consumers needing support for traumatic loss can be seen on an individual basis.

**Units: 45 (annual)**

**Grief Counseling: Groups**

Consumers can be seen for traumatic loss support in groups such as (a) structured groups; (b) weekly drop-in groups; or (c) monthly drop-in groups. **Units: 45 (annual)**

**VIII. Service Objectives**

The Grantee will provide the following services on an annual basis during the term of this contract:

- Grantee will provide suicide prevention and emotional support services for a total of **1000** unduplicated consumers.
- Grantee will provide a total of **485** hours of social services/other services to the consumers.
- Grantee will provide a total of **75** crisis intervention/suicide prevention units to the consumers.
- Grantee will provide a total of **150** distress assessment/support units to the consumers.
- Grantee will provide a total of **200** emotional support units to the consumers.
- Grantee will provide 45 units of individual grief counseling to consumers.
- Grantee will provide 45 units of group grief counseling to consumers.
- Grantee will provide at least 6 trainings for new volunteers, training at a minimum **120** new volunteers for service on the Friendship Line.
- Grantee will increase the number of overnight stipended volunteers from 8 to 18 by the end of the year to better accommodate increased overnight call volume

**Please Note: The Grantee will have to be compliant with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy and security rules.**

**For specific compliance requirements see Appendix G&H—HIPAA Business Associate Addendum.**

**IX. Outcome Objective**

- At least 85% of participants indicate excellent or good in rating the quality of services they receive.
- At least 85% of participants indicate that they receive the services and/or activities they need from the agency.

**X. Reporting and Other Requirements**

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

- A. The grantee will enter into the CA Getcare -consumers' data,
- B. The grantee will enter into the CA Getcare Service Unit section all the units of service by the 5th working day of the month for the preceding month.
- C. Monthly reports must be entered into the Contracts Administration, Reporting, and Billing Online (CARBON) system regarding the following:
  - 1. Number of unduplicated consumers served during the month.
  - 2. Number of units of service provided during the month.
- D. Grantee will provide an annual report summarizing the contract activities, referencing the tasks as described in Section VII & VIII- Outcome Objectives. This report will also include accomplishments and challenges encountered by the Grantee. Grantee will enter the annual metrics in the Contracts Administration Reporting & Billing Online (CARBON) system by the 15th of the month following the end of the program year on an annual basis:
  - The percentage of participants surveyed that have indicated excellent or good in rating the quality of services they received.
  - The percentage of participants surveyed that have indicated they have received the services and/or activities they needed from the agency.
- E. Grantee shall issue a Fiscal Closeout Report at the end of the fiscal year. The report is due to HSA no later than July 31 each grant year. This report must be submitted to the CARBON system.
- F. Grantee will provide an annual consumer satisfaction survey report to OOA by March 15 each grant year.
- G. Grantee shall develop and deliver ad hoc reports as requested by HSA.

- H. Apart from reports requested to be sent via e-mail to the Program Analyst and/or Contract Manager, all other reports should be sent to the following addresses:

Monte Cimino, Program Analyst  
DAAS, Office on the Aging  
1650 Mission St.  
San Francisco, CA 94103  
[monte.cimino@sfgov.org](mailto:monte.cimino@sfgov.org)

Justin Chan, Contract Manager  
Human Services Agency  
PO Box 7988  
San Francisco, CA 94120  
[Justin.chan@sfgov.org](mailto:Justin.chan@sfgov.org)

X. **Monitoring Activities**

- A. Program Monitoring: Program monitoring will include review of compliance to specific program standards or requirements; client eligibility and targeted mandates, back up documentation for the units of service and all reporting, and progress of service and outcome objectives; how participant records are collected and maintained; reporting performance including monthly service unit reports on CA GetCare, organizational chart, evidence of provision of training to staff regarding the Elder Abuse Reporting; clinical supervision of volunteers, program operation, which includes a review of a written policies and procedures manual of all DAAS funded programs, written project income policies if applicable, grievance procedure posted in the center/office, and also given to the consumers who are homebound, hours of operation are current according to the site chart; a board of director lists and whether services are provided appropriately according to Sections VI and VII.
- 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 and HIPAA requirements.



## Appendix C – Method of Payment

- I. In accordance with Section 5 of the Grant Agreement, payments shall be made for actual costs incurred and reported for each month. Under no circumstances shall payment exceed the amount set forth in Section 5 Compensation of the Agreement.
- II. Grantee will submit all bills, invoices and related documentation in the format specified by SFHSA within 15 days after the month of service to SFHSA’s web-based Contracts Administration, Reporting, and Billing Online (CARBON) System at: <https://contracts.sfhsa.org>  
  
Grantee may submit bills, invoices and related documentation in the format specified by SFHSA via paper or email only upon special permission by their assigned Contract Manager.
- III. Grantee must sign up to receive payments electronically via Automated Clearing House (ACH). Remittance information will be provided through Paymode-X. Additional information and sign up is available at: <http://www.sfgov.org/ach>
- IV. The Executive Director or CFO must submit a letter of authorization designating specific users who will have access to CARBON to electronically submit and sign for invoices, budget revision requests, program reports, and view other information that is in CARBON.
  - A. Submittal of the invoice by designated authorized personnel with proper login credentials constitutes an electronic signature and certification of the invoice.
  - B. Authorized personnel with CARBON login credentials shall not share or internally reassign logins.
  - C. Grantee shall notify SFHSA Contract Manager immediately regarding any need for the restriction or termination of a previously authorized CARBON login.
- V. Invoices shall include actual expenditures incurred during the month, unless otherwise specified.
  - A. The invoice supplied shall include the total dollar amount claimed for the month.
  - B. There shall be no variance from the line item budget submitted which adversely affects program performance as contained in the Grantee’s proposal and specified in the grant.
  - C. The invoice shall show by line item:
    1. Budgeted amount (per approved grant budget or modification)
    2. Expenses for invoice period
    3. Expenses year-to-date
    4. % of budget expended
    5. Remaining balance
    6. Adjustments, including advance payment recovery
    7. Program income when specified in the grant agreement.
  - D. Personnel expenditures will show same line item categories by position detail. Detail will show name of employee, position name, %FTE and budgeted salary.
  - E. With written approval from SFHSA Program/Contract Manager, Grantee may adjust items within the existing budget of the grant in accordance with SFHSA Office of Contract Management Policy for Budget Line Item Revisions.
  - F. Supporting Documentation, except as discussed below need not be submitted with the invoice. However, Grantee must keep and make available as requested such supporting documentation for all expenditures for which reimbursement is requested for all costs so claimed. All charges incurred shall be due and payable only after services have been rendered, except as stated otherwise. Supporting documentation must be uploaded into CARBON and submitted along with the invoice.



- Documentation should be submitted with the invoice for all payroll expenses paid to budgeted personnel for the period covered by the invoice. Payroll information can be from a payroll service or a payroll ledger from the Grantee's accounting system
- For any and all non-recurring expenditures (e.g. equipment purchases/capital upgrades and building repair and upgrades) and/or items that exceed \$5,000, Grantee shall supply back-up documentation in the form of a paid invoice(s).
- Indirect costs shall not be applied to non-reoccurring expenses.
- All subcontracted services must be documented by submission of the subcontractor's paid invoice, regardless of dollar amount.
- If this grant agreement contains any Pass-Through funding requiring specific expense documentation from the source agency, Federal, State, Private or other then the following documentation shall also be included with each invoice submission:

Funding Agency: \_\_\_\_\_ CFDA or other Identification #: \_\_\_\_\_

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

- VI. Following SFHSA verification of submitted Invoice with required documentation of incurred expenses via CARBON, SFHSA will authorize payment within 10 business days after receipt of the invoice.
- VII. Within 45 days after the end of the grant period, Grantee shall submit a final report reflecting actual expenditures, which will be supported by the Grantee's accounting records. If a refund is due SFHSA, it will be submitted with the final report.
- VIII. Advances or prepayments are allowable in order to meet the Grantee cash flow needs in certain unique circumstances. The Agency, at its sole discretion, shall make available to the Grantee upon written request an advance amount not to exceed two (2) months or 1/6<sup>th</sup> of the total annualized grant award, or as mutually agreed upon. The advanced sum shall be deducted from the Grantee's monthly invoices at an equal rate each month that will enable repayment by the tenth month of the fiscal year. For a twelve-month grant the rate of repayment of the advance will be 1/10<sup>th</sup> per month from July to April. Requests for advance payment will be granted on a case-by-case basis and are not intended to be a regular "automatic" procedure. Approval will be a consensus of Program and Contract Staff.

Once the grant is certified, the Grantee, prior to distribution of any advanced payment, must fulfill the following conditions:

- 1. All contractual compliance requirements must be current, i.e., reports submitted and approved, corrective actions resolved, business tax and insurance certificates in place, prompt and fully documented billings.

2. The Grantee shall submit a written request with a narrative justification that fully describes the unique circumstances to the Program Manager and Contract Manager for review and approval.
  3. Final invoice from the preceding fiscal year must be received prior to advance distribution.
- IX. Timely Submission of Reports – If reports/documents are required, Grantee shall submit these reports prior to submitting invoices. Failure to submit required reports/documents in CARBON by specified deadlines may result in withholding of grant payments.

### 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
Department of Aging and Adult Services	07/01/2013	\$92,142
Department of Aging and Adult Services	07/01/2013	\$84,118
Department of Aging and Adult Services	07/01/2013	\$199,185
Department of Aging and Adult Services	07/01/2013	\$152,476
Department of Aging and Adult Services	07/01/2013	\$196,240
Department of Aging and Adult Services	07/01/2013	\$51,765
Department of Aging and Adult Services	07/01/2013	\$48,521
Department of Aging and Adult Services	01/01/2014	\$127,000
Department of Aging and Adult Services	07/01/2013	\$325,483
Department of Aging and Adult Services	07/01/2013	\$87,735.01
Department of Aging and Adult Services	07/01/2013	\$3,224,024

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

**GRANT AGREEMENT**

between

CITY AND COUNTY OF SAN FRANCISCO

and

**INSTITUTE ON AGING**

**THIS GRANT AGREEMENT** (this “Agreement”) is made this **1<sup>st</sup>** day of **July**, 2014, in the City and County of San Francisco, State of California, by and between **Institute on Aging, 3575 Geary Blvd, San Francisco, CA 94118** (“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) seeking a grant, for the purpose of funding the matters set forth in the Grant Plan (as hereinafter defined); and summarized briefly as follows:

**To provide Suicide Prevention, Elder Abuse Prevention, and the Elder Abuse Forensic Center for seniors and adults with disabilities;** and

**WHEREAS**, the Grant is funded with Federal dollars, CFDA #93.041; and

**WHEREAS**, approval for said Agreement was obtained when the Civil Service Commission approved Grant Number **4081-10/11** on **March 7, 2011**; and

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

**NOW, THEREFORE**, in consideration of the promises 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.

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

(n) “**HRC**” shall mean the Human Rights Commission of 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.

**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 “subgrantee,” “successor” or “assign” herein refers only to a subgrantee (“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 21.10-1 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, 2014** 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, 2015**.

### **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 subgrantees 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 **Four Hundred Thirty One Thousand, Seven Hundred Sixty Two** Dollars (**\$431,762**) for the period from **July 1, 2014 to June 30, 2015, plus any contingent amount authorized by City and certified as available by the Controller.**

**Contingent amount:** Up to **Forty Three Thousand, One Hundred Seventy-Six** Dollars (**\$43,176**) for the period from **July 1, 2014 to June 30, 2015 (Y1), may be available, in the City's sole discretion, as a contingency subject to authorization by the City and certified as available by the Controller.**

The maximum amount of Grant Funds disbursed hereunder shall not exceed **Four Hundred Seventy Four Thousand, Nine Hundred Thirty Eight** Dollars (**\$474,938**) for the period from **July 1, 2014 to June 30, 2015 (Y1).**

Grantee understands that, of the maximum dollar disbursement listed in Section 5.1 of this Agreement, **the amount shown as the Contingent Amount may not to be used in Program Budgets attached to this Agreement as Appendix B, and is not available to Grantee without a revision to the Program Budgets of Appendix B specifically approved by Grant Agreement Administrator.** Grantee further understands that no payment of any portion of this contingency amount will be made unless and until such funds are certified as available by Controller. Grantee agrees to fully comply with these laws, regulations, and policies/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 OMB Circular A-122, 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 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 Disallowance and Single Audit Requirements:** If Grantee claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States 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. 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. Single Audit Requirements: Grantees that expend \$500,000 or more in a year from any and all Federal awards shall have a single audit conducted in accordance with OMB Circular A-133. Grantees that expend less than \$500,000 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.

## **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 OMB Circular A-133, 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, 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.** Pursuant to San Francisco Administrative Code §21.35, any grantee, subgrantee or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. A grantee, subgrantee or consultant will be deemed to have submitted a false claim to the City if the grantee, subgrantee 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.** Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

(a) Grantee shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty (30) days following the date on which this Agreement becomes effective (unless Grantee has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Grantee; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

(b) Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Grantee of the terms of this Agreement. If, within thirty (30) days after Grantee receives written notice of such a breach, Grantee fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Grantee fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

(c) Any Subgrant entered into by Grantee shall require the subgrantee to comply, as to the subgrantee's Eligible Employees, with each of the terms of this section.

(d) Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

## **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 Subgrants.** 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 and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Grantee or loss of or damage to property, arising directly or indirectly from Grantee's performance of this Agreement, including, but not limited to, Grantee's use of facilities or equipment provided by City or others,

regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Grantee, its subcontractors or either's agent or employee. 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. In addition to Grantee's obligation to indemnify City, Grantee specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Grantee by City and continues at all times thereafter. Grantee shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement. Grantee shall also indemnify, defend, and hold City harmless from all suits or claims or administrative proceedings for breaches of federal and/or state law regarding the privacy of personally identifying information, personal health information, electronic records, or related topics, arising directly or indirectly from Grantee's performance of this Agreement, except where such breach is the result of the active negligence or willful misconduct of 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.
- (c) Commercial Automobile Liability Insurance with limits not less than one million dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- (d) Professional liability insurance for negligent acts, errors or omission with respect to professional or technical services, if any, required in the performance of this Agreement with limits not less than one million dollars (\$1,000,000) each claim.

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

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

(e) **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.

(f) **Cross Default.** Grantee defaults under any other agreement between Grantee and City (after expiration of any grace period expressly stated in such agreement).

(g) **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.

(h) **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.

## 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 this Chapter 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 subcontractors, and all agents and employees of Contractor and any subcontractor 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 subcontractors 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.

## **ARTICLE 13 ASSIGNMENTS AND SUBGRANTING**

**13.1 No Assignment by Grantee.** Grantee shall not, either directly or indirectly, assign, transfer, hypothecate, subgrant 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 Subgranting.** If Appendix E lists any permitted subgrantees, then notwithstanding any other provision of this Agreement to the contrary, Grantee shall have the right to subgrant 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 subgrant or delegate the whole of the Grant Plan. Grantee may subgrant 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 subgrantee 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 subgranted 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 subgrantee 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 Subgrant.** Each subgrant 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 subgrant shall incorporate all of the terms of this Agreement, insofar as they apply to the subgranted portion of the Grant Plan. Without limiting the scope of the foregoing, each subgrant shall provide City, with respect to the s 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 subgrant 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 GRANTEE 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 Grant Management  
P.O. Box7988  
San Francisco, CA 94120-7988  
Facsimile No. 415-557-5679

If to Grantee: Institute on Aging  
3330 Geary Blvd, 2<sup>nd</sup> Floor  
San Francisco, CA 94118  
Attn: J.Thomas Briody  
Facsimile No. (415) 750-4179  
Email: tbriody@ioaging.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 Left Blank by Agreement of the Parties

### 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.** As a condition to this Agreement, Grantee shall execute the “Chapter 12B Declaration: Nondiscrimination in Grants and Benefits” form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

(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 require 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. Grantee 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 Grantee's obligations under the MCO is set forth in this Section. Grantee is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Grantee to pay Grantee'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 Grantee is obligated to keep informed of the then-current requirements. Any subgrant entered into by Grantee shall require the subgrantee 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 Grantee's obligation to ensure that any subgrantees of any tier under this Agreement comply with the requirements of the MCO. If any subgrantee under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Grantee.

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



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

f. Grantee'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 Grantee fails to comply with these requirements. Grantee agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Grantee's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Grantee 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, Grantee fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Grantee fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, 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. Grantee represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

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

### **16.9. Requiring Health Benefits for Covered Employees**

Grantee agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Grantee shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Grantee chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Grantee is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Grantee's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Grantee if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Grantee fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Grantee fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each

of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subgrant entered into by Grantee shall require the Subgrantee to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Grantee shall notify City's Office of Grant Administration when it enters into such a Subgrant and shall certify to the Office of Grant Administration that it has notified the Subgrantee of the obligations under the HCAO and has imposed the requirements of the HCAO on Subgrantee through the Subgrant. Each Grantee shall be responsible for its Subgrantees' compliance with this Chapter. If a Subgrantee fails to comply, the City may pursue the remedies set forth in this Section against Grantee based on the Subgrantee's failure to comply, provided that City has first provided Grantee with notice and an opportunity to obtain a cure of the violation.

e. Grantee shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Grantee's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

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

g. Grantee shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Grant.

h. Grantee shall keep itself informed of the current requirements of the HCAO.

i. Grantee shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subgrantees and Subtenants, as applicable.

j. Grantee shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Grantee shall allow City to inspect Grantee's job sites and have access to Grantee's employees in order to monitor and determine compliance with HCAO.

l. City may conduct random audits of Grantee to ascertain its compliance with HCAO. Grantee agrees to cooperate with City when it conducts such audits.

m. If Grantee is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Grantee later enters into an agreement or agreements that cause Grantee's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Grantee and the City to be equal to or greater than \$75,000 in the fiscal year.

**16.10 Limitations on Contributions.** Through execution of this Agreement, Grantee acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who 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. Grantee 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. Grantee further acknowledges that the prohibition on contributions applies to each prospective party to the grant; each member of Grantee's board of directors; Grantee's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Grantee; any subgrantee listed in the bid or grant; and any committee that is sponsored or controlled by Grantee. Additionally, Grantee acknowledges that Grantee must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

#### **16.11 First Source Hiring Program.**

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

**b. First Source Hiring Agreement.** As an essential term of, and consideration for, any grant or property grant with the City, not exempted by the FSHA, the Grantee shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the grant or property grant. Grantees shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

(1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

(2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

(3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating

employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term 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 this Chapter. 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 this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

(6) Set the term of the requirements.

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

(8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

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

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

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

**e. Liquidated Damages.** Grantee agrees:

(1) To be liable to the City for liquidated damages as provided in this section;

(2) To be subject to the procedures governing enforcement of breaches of grants based on violations of grant provisions required by this Chapter as set forth in this section;

(3) That the grantee's commitment to comply with this Chapter is a material element of the City's consideration for this grant; that the failure of the grantee to comply with the grant provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the grantee from the first source hiring process, as determined by the FSHA during its first investigation of a grantee, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the grantee's failure to comply with its first source referral contractual obligations.

(4) That the continued failure by a grantee 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 grantee'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 grantee to comply with its first source referral contractual obligations.

(6) That the failure of grantees to comply with this Chapter, except property grantees, 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. Subgrants.** Any subgrant entered into by Grantee shall require the subgrantee to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

**16.12 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.

**16.13 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.

**16.14 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.

## **16.15 Reserved.**

**16.16 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.

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

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

**16.18 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.

**16.19 Slavery Era Disclosure. Left Blank by Agreement of the Parties**

**16.20 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.

**16.21. 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.

**16.22 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, HIPAA 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 Subgrantees

**None**

**Appendix F**  
**Additional Terms**  
**Healthcare Insurance Portability and Accountability Act of 1996 ("HIPAA")**

**1. HIPAA**

The parties acknowledge that CITY is a Covered Entity as defined in the Healthcare Insurance Portability and Accountability Act of 1996 ("HIPAA") and is therefore required to abide by the Privacy Rule contained therein. The parties further agree that CONTRACTOR falls within the following definition under the HIPAA regulations:

- A Covered Entity subject to HIPAA and the Privacy Rule contained therein; or
- A Business Associate subject to the terms set forth in Appendix E;
- Not Applicable, CONTRACTOR will not have access to Protected Health Information.

**2. HUMAN SERVICES AGENCY PRIVACY AND DATA SECURITY POLICIES**

- A. The Human Services Agency (HSA) has developed Privacy and Data Security Policies that encompass all federal and state confidentiality and data security regulations, including HIPAA and local policies.

CONTRACTORS agree to abide by the HSA Privacy and Data Security Policies, unless otherwise granted a waiver from certain policies by HSA, and will be monitored and evaluated on the following criteria:

- B. HSA Privacy Policy is integrated in the program's governing policies and procedures regarding patient privacy and confidentiality.

As Measured by: Evidence that the policy and procedures that abides by the rules outlined in the HSA Privacy Policy have been adopted, approved and implemented.

- C. All staff that handles patient health information are trained (including new hires) and annually updated in the program's privacy/confidentiality policies and procedures.

As Measured by: Documentation exists showing individuals were trained.

- D. A Privacy Notice that meets the requirements of the Federal Privacy Rule (HIPAA) is written and provided to all patients/clients served in their threshold and other languages. If document is not available in the patient's/client's relevant language, verbal translation is provided.

As Measured by: Evidence in patient's/client's chart or electronic file that patient was "noticed." (Examples in English, Cantonese, Vietnamese, Tagalog, Spanish, Russian will be provided.)

- E. A Summary of the above Privacy Notice is posted and visible in registration and common areas of treatment facility.

As Measured by: Presence and visibility of posting in said areas. (Examples in English, Cantonese, Vietnamese, Tagalog, Spanish, Russian will be provided.)

- F. Each disclosure of a patient's/client's health information for purposes other than treatment, payment, or operations is documented.

As Measured by: Documentation exists

- G. Authorization for disclosure of a patient's/client's health information is obtained prior to release (1) to providers outside the HSA Safety Net or (2) from a substance abuse program.

As Measured by: An authorization form that meets the requirements of the Federal Privacy Rule (HIPAA) is signed and in patient's/client's chart/file

### **3. THIRD PARTY BENEFICIARIES**

No third parties are intended by the parties hereto to be third party beneficiaries under this Agreement, and no action to enforce the terms of this Agreement may be brought against either party by any person who is not a party hereto.

### **4. CERTIFICATION REGARDING LOBBYING**

CONTRACTOR certifies to the best of its knowledge and belief that:

- A. No federally appropriated funds have been paid or will be paid, by or on behalf of CONTRACTOR to any persons for influencing or attempting to influence an officer or an employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the entering into of any federal cooperative agreement, or the extension, continuation, renewal, amendment, or modification of a federal contract, grant, loan or cooperative agreement.
- B. If any funds other than federally appropriated funds have been paid or will be paid to any persons for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, CONTRACTOR shall complete and submit Standard Form -111, "Disclosure Form to Report Lobbying," in accordance with the form's instructions.
- C. CONTRACTOR shall require the language of this certification be included in the award documents for all subawards at all tiers, (including subcontracts, subgrants, and contracts under grants, loans and cooperation agreements) and that all subrecipients shall certify and disclose accordingly.
- D. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## **5. MATERIALS REVIEW**

CONTRACTOR agrees that all materials, including without limitation print, audio, video, and electronic materials, developed, produced, or distributed by personnel or with funding under this Agreement shall be subject to review and approval by the Contract Administrator prior to such production, development or distribution. CONTRACTOR agrees to provide such materials sufficiently in advance of any deadlines to allow for adequate review. CITY agrees to conduct the review in a manner which does not impose unreasonable delays.



## Appendix G

# BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum (“Addendum”) supplements and is made a part of the contract (“Contract”) by and between the City and County of San Francisco, Covered Entity (“CE”) and Contractor, Business Associate (“BA”).

### RECITALS

- A. CE wishes to disclose certain information to BA pursuant to the terms of the Contract, some of which may constitute Protected Health Information (“PHI”) (defined below).
- B. CE and BA intend to protect the privacy and provide for the security of PHI disclosed to BA pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws.
- C. As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require CE to enter into a contract containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(a) and (e) and 164.504(e) of the Code of Federal Regulations (“C.F.R.”) and contained in this Addendum.

In consideration of the mutual promises below and the exchange of information pursuant to this Addendum, the parties agree as follows:

#### 1. Definitions

- a. **Breach** shall have the meaning given to such term under the HITECH Act and HIPAA Regulations [42 U.S.C. Section 17921 and 45 C.F.R. Section 164.402].
- b. **Breach Notification Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and D.
- c. **Business Associate** shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including, but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.
- d. **Covered Entity** shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.
- e. **Data Aggregation** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- f. **Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- g. **Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.
- h. **Electronic Health Record** shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.

- i. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- j. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- k. **Protected Health Information or PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the part, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].
- l. **Protected Information** shall mean PHI provided by CE to BA or created, maintained, received or transmitted by BA on CE's behalf.
- m. **Security Incident** shall have the meaning given to such term under the Security Rule, including, but not limited to, 45 C.F.R. Section 164.304.
- n. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- o. **Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h) and 45 C.F.R. Section 164.402.

## 2. **Obligations of Business Associate**

- a. **Permitted Uses.** BA shall use Protected Information only for the purpose of performing BA's obligations under the Contract and as permitted or required under the Contract and Addendum, or as required by law. Further, BA shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by CE. However, BA may use Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE [45 C.F.R. Sections 164.504(e)(2) and 164.504(e)(4)(i)].
- b. **Permitted Disclosures.** BA shall disclose Protected Information only for the purpose of performing BA's obligations under the Contract and as permitted or required under the Contract and Addendum, or as required by law. BA shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by CE. However, BA may disclose Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (ii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE. If BA discloses Protected Information to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Addendum and used or disclosed only as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BA of any breaches, suspected

breaches, security incidents, or unauthorized uses or disclosures of the Protected Information in accordance with paragraph 2. m. of the Addendum, to the extent it has obtained knowledge of such occurrences [42 U.S.C. Section 17932; 45 C.F.R. Section 164.504(e)].

- c. **Prohibited Uses and Disclosures.** BA shall not use or disclose PHI other than as permitted or required by the Contract and Addendum, or as required by law. BA shall not use or disclose Protected Information for fundraising or marketing purposes. BA shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates [42 U.S.C. Section 17935(a) and 45 C.F.R. Section 164.522(a)(vi)]. BA shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of CE and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2), and the HIPAA regulations, 45 C.F.R. Section 164.502(a)(5)(ii); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to the Contract.
- d. **Appropriate Safeguards.** BA shall implement appropriate safeguards to prevent the use or disclosure of Protected Information other than as permitted by the Contract or Addendum, including, but not limited to, administrative, physical and technical safeguards in accordance with the Security Rule, including, but not limited to, 45 C.F.R. Sections 164.308, 164.310, and 164.312. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. BA shall comply with the policies and procedures and documentation requirements of the Security Rule, including, but not limited to, 45 C.F.R. Section 164.316. [42 U.S.C. Section 17931]
- e. **Business Associate's Subcontractors and Agents.** BA shall ensure that any agents and subcontractors that create, receive, maintain or transmit Protected Information on behalf of BA, agree in writing to the same restrictions and conditions that apply to BA with respect to such Protected Information and implement the safeguards required by paragraph 2.d. above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. BA shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. Sections 164.530(f) and 164.530(e)(1)).
- f. **Accounting of Disclosures.** Within ten (10) calendar days of a request by CE for an accounting of disclosures of Protected Information or upon any disclosure of Protected Information for which CE is required to account to an individual, BA and its agents and subcontractors shall make available to CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935 (c), as determined by CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents and subcontractors for at least six(6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an Electronic Health Record. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. If a patient submits a request for an accounting directly to BA or its agents or subcontractors, BA shall forward the request to CE in writing within five(5) calendar days.

- g. **Governmental Access to Records.** BA shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to CE and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining BA's compliance with HIPAA [45 C.F.R. Section 164.504(e)(2)(ii)(I)]. BA shall provide CE a copy of any Protected Information and other documents and records that BA provides to the Secretary concurrently with providing such Protected Information to the Secretary.
- h. **Minimum Necessary.** BA, its agents and subcontractors shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure. [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)] BA understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."
- i. **Data Ownership.** BA acknowledges that BA has no ownership rights with respect to the Protected Information.
- j. **Notification of Possible Breach.** BA shall notify CE within twenty-four (24) hours of any suspected or actual breach of Protected Information; any use or disclosure of Protected Information not permitted by the Contract or Addendum; any security incident (i.e., any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system) related to Protected Information, and any actual or suspected use or disclosure of data in violation of any applicable federal or state laws by BA or its agents or subcontractors. The notification shall include, to the extent possible, the identification of each individual who unsecured Protected Information has been, or is reasonably believed by the business associate to have been, accessed, acquired, used, or disclosed, as well as any other available information that CE is required to include in notification to the individual, the media, the Secretary, and any other entity under the Breach Notification Rule and any other applicable state or federal laws, including, but not limited, to 45 C.F.R. Section 164.404 through 45 C.F.R. Section 164.408, at the time of the notification required by this paragraph or promptly thereafter as information becomes available. BA shall take (i) prompt corrective action to cure any deficiencies and (ii) any action pertaining to unauthorized uses or disclosures required by applicable federal and state laws. (This provision should be negotiated.) [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)]
- k. **Breach Pattern or Practice by Business Associate's Subcontractors and Agents.** Pursuant to 42 U.S.C. Section 17934(b) and 45 C.F.R. Section 164.504(e)(1)(ii), if the BA knows of a pattern of activity or practice of a subcontractor or agent that constitutes a material breach or violation of the subcontractor or agent's obligations under the Contract or Addendum or other arrangement, the BA must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the BA must terminate the Contract or other arrangement if feasible. BA shall provide written notice to CE of any pattern of activity or practice of a subcontractor or agent that BA believes constitutes a material breach or violation of the subcontractor or agent's obligations under the Contract or Addendum or other arrangement within five (5) days of discovery and shall meet with CE to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

### 3. Termination

- a. **Material Breach.** A breach by BA of any provision of this Addendum, as determined by CE, shall constitute a material breach of the Contract and shall provide grounds for immediate termination of the

Contract, any provision in the Contract to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii)].

- b. Judicial or Administrative Proceedings.** CE may terminate the Contract, effective immediately, if (i) BA is named as defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.
- c. Effect of Termination.** Upon termination of the Contract for any reason, BA shall, at the option of CE, return or destroy all Protected Information that BA and its agents and subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by CE, BA shall continue to extend the protections and satisfy the obligations of Section 2 of this Addendum to such information, and limit further use and disclosure of such PHI to those purposes that make the return or destruction of the information infeasible [45 C.F.R. Section 164.504(e)(ii)(2)(J)]. If CE elects destruction of the PHI, BA shall certify in writing to CE that such PHI has been destroyed in accordance with the Secretary's guidance regarding proper destruction of PHI.
- d. Disclaimer**

CE makes no warranty or representation that compliance by BA with this Addendum, HIPAA, the HITECH Act, or the HIPAA Regulations will be adequate or satisfactory for BA's own purposes. BA is solely responsible for all decisions made by BA regarding the safeguarding of PHI.

#### **4. Amendment to Comply with Law.**

The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Contract or Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations and other applicable state or federal laws relating to the security or confidentiality of PHI. The parties understand and agree that CE must receive satisfactory written assurance from BA that BA will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable laws. CE may terminate the Contract upon thirty (30) days written notice in the event (i) BA does not promptly enter into negotiations to amend the Contract or Addendum when requested by CE pursuant to this section or (ii) BA does not enter into an amendment to the Contract or Addendum providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

#### **5. Reimbursement for Fines**

In the event that CE pays a fine to a state or federal regulatory agency based on an impermissible use or disclosure of PHI by BA or its subcontractors or agents, then BA shall reimburse CE in the amount of such fine within thirty (30) calendar days.

## APPENDIX A-2 –SERVICES TO BE PROVIDED BY GRANTEE

### INSTITUTE ON AGING

#### ELDER/DEPENDENT ADULT ABUSE PREVENTION

July 1, 2014 – June 30, 2015

#### I. Purpose

The purpose of this grant is to improve the protection of older persons and dependent adults who are at risk of experiencing abuse, neglect, exploitation, or self-neglect by raising public awareness of elder/dependent adult abuse issues and mandatory reporting requirements

#### II. Definitions

HSA	Human Services Agency of City and County of San Francisco
DAAS	Department of Aging and Adult Services
Adult Protective Services	Otherwise referred to as APS. Government agency that receives and investigates reports of suspected elder/dependent adult abuse.
Grantee	Institute on Aging
Elder/Senior	Person who is 60 years or older.
Adult with Disability	Person 18 years of age or older living with a disability.
Dependent Adult	Persons who cannot care for themselves and depend on others to meet their most basic needs.
Mandated Reporter	In California, any individual that has assumed full or intermittent care of an elder or a dependent adult through the course of his or her work.

#### III. Target Population

The target population consists of elders over the age of 60, and adults living with a disability that are between the ages of 18 and 59. Services must target clients that are members of one or more of the following groups that have been identified as demonstrating the greatest economic and social need.

- Low-income
- Non or limited –English speaking
- Minority
- Frail
- Lesbian/Gay/Bisexual/Transgender
- Family caregivers

The direct, target population to be served through this contract are the agencies, professionals, community members, advocates, volunteers that serve as gatekeepers in the aging and adult services network and more specifically that serve adults with disabilities and elders over the age of 60 that meet the above mentioned economic and social need categories.



- Increase the awareness of community gatekeepers, seniors, adults with disabilities, and the general public about elder/ dependent adult abuse, including its identification, prevention, and reporting.
- In collaboration with APS, create outreach materials to be targeted at law enforcement to ensure regarding the identification and reporting of elder and dependent adult abuse and work collaboratively with SFPD to ensure widespread distribution of materials.

**Please Note: The Grantee will have to be compliant with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy and security rules. For specific compliance requirements see Appendix G & H- HIPAA Business Associate Addendum.**

## **IX. Outcome Objectives**

- **Train a minimum of 750 individuals in the general public, mandated reporters, and other professionals on elder abuse prevention in each fiscal year.**
- At least 80 % of community partners surveyed will indicate that they have learned one or more new facts regarding the identification, reporting, and intervention of elder and dependent adult abuse.
- Collaborate with SFPD to ensure that at least 75% of SFPD officers receive training regarding the identification, reporting, and intervention of suspected elder/dependent adult abuse.

## **X. Reporting Requirements**

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

- Grantee is exempt from entering consumer data into CA Getcare but is required to input monthly unit of service reports into the Summary Service Recording Tool by the 5<sup>th</sup> working day of the month for the preceding month. This report should be uploaded into the Contracts Administration Reporting & Billing Online (CARBON) system.
- Grantee shall submit to DAAS/APS a quarterly report on the Elder Abuse Prevention Quarterly Activity Report (Report form attached). This report should be uploaded into the CARBON system.

**Quarterly Reporting Period:** Specific reporting periods and due dates are as follows:

<u>Quarter</u>	<u>Report Periods</u>	<u>Due Date from Grantee</u>
1 <sup>st</sup> Quarter	July 1 – September 30	October 15
2 <sup>nd</sup> Quarter	October 1 – December 31	January 15
3 <sup>rd</sup> Quarter	January 1 – March 31	April 15
4 <sup>th</sup> Quarter	April 1 – June 30	July 15

- Grantee shall issue a Fiscal Closeout Report at the end of the fiscal year. The report is due to HSA no later than July 31 and should be uploaded into the CARBON system.
- Grantee will provide an annual consumer satisfaction survey report to DAAS/APS by March 15 each grant year.
- Grantee shall develop and deliver ad hoc reports as requested by HSA.



- F. Apart from reports requested to be sent via e-mail to the Program Analyst and/or Contract Manager, all other reports should be sent to the following addresses:

Jill Nielsen, Program Director  
DAAS, APS  
1650 Mission Street, 5/F  
San Francisco, CA 94103  
Jill.Nielsen@sfgov.org

Justin Chan, Contract Manager  
Human Services Agency  
PO Box 7988  
San Francisco, CA 94120  
Justin.Chan@sfgov.org

## **XI. Monitoring Activities**

- A. Program Monitoring: Program monitoring will include review of compliance specific program standards; adherence to client eligibility and targeted mandates, back up documentation for the units of service and all reporting, and progress of service and outcome objectives; reporting performance including monthly service unit reports sent to DAAS/OOA; maintenance of service unit logs; agency and organization standards, which include current organizational chart, evidence of provision of training to staff regarding the Elder Abuse Reporting; program operation, which includes a review of a written policies and procedures manual of all OOA funded programs, written project income policies if applicable, grievance procedure posted in the center/office, and also given to the consumers who are homebound, hours of operation are current according to the site chart; a board of director list and whether services are provided appropriately according to Sections VI and VII.

The APS Program Director or designee will attend at least one training and outreach session conducted by the grantee in order to evaluate the quality and effectiveness in order to ensure compliance with the contract objectives.

- B. Fiscal Compliance and Contract Monitoring: Fiscal monitoring will include a 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 a 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.

Program: Elder Abuse Prevention  
 (Same as Line 9 on HSA #1)

**Operating Expense Detail**

<u>Expenditure Category</u>	TERM				TOTAL
		7/1/14-6/30/15			7/1/14-6/30/15
Rental of Property		\$4,682			\$4,682
Office/Program Supplies, Postage		\$1,000			\$1,000
Training		\$1,200			\$1,200
Staff Travel-(Local & Out of Town)		\$988			\$988
CONSULTANT/SUBCONTRACTOR DESCRIPTIVE TITLE					
Medical Consultant					
OTHER					
TOTAL OPERATING EXPENSE		\$7,870			\$7,870
<b>HSA #3</b>					<b>11/15/2007</b>

**APPENDIX A-1 - SERVICES TO BE PROVIDED BY GRANTEE**

**INSTITUTE ON AGING**

**ELDER ABUSE FORENSIC CENTER**

**July 1, 2014 – June 30, 2015**

**Background**

Over the past five years, funding for the start-up of three Forensic Centers in California was provided by the Archstone Foundation and augmented by the respective, local county governments. The overarching goal of a Forensic Center is to bring together agency representatives and experts in a variety of fields that are involved in the identification, intervention, and remedy of dependent adult and elder abuse. The multi-disciplinary Forensic Center team includes professionals from medical, legal, social work, and neuropsychological backgrounds, as well as law enforcement and relevant county based programs such as Adult Protective Services and the Office of the Public Guardian. The goal of the resulting multi-disciplinary meetings is to provide an opportunity for in-depth discussion, evaluation, and intervention of specific cases that involve dependent adult and elder abuse, exploitation, neglect, or self-neglect. Additionally, the Forensic Center meetings facilitate the investigation and prosecution of perpetrators of criminal abuse. The cooperation and collaboration that occurs as part of the multi-disciplinary discussions assists the Forensic Center partners in developing a joint action plan for each specific case discussed, thus resulting in a coordinated approach and direction for each victim of dependent adult and elder abuse reviewed by the Forensic Center.

**I. Purpose of Grant**

The SF Elder Abuse Forensic Center is responsible for convening and coordinating a multi-disciplinary team, comprised of SFPD, the District Attorney’s Office, Adult Protective Services, the Office of the Public Guardian, and paid consultants such as a Geriatrician, a Geriatric Psychiatrist or other professionals deemed integral to the Forensic Center case discussions. The multi-disciplinary team, otherwise known as the SF Elder Abuse Forensic Center, meets on a regular basis to discuss cases of dependent adult and elder abuse with the goal of sharing expertise and resources to provide further direction, which might involve prosecution, to the cases being discussed

**Definitions**

HSA	Human Services Agency of the City and County of San Francisco
DAAS	Department of Aging and Adult Services
Grantee	Institute on Aging
Senior	Person who is 60 years or older
Adult with Disability	Person 18 years of age or older living with a disability
Adult Protective Services	Otherwise referred to as APS. A government agency that investigates and intervenes in reports of suspected elder/dependent adult abuse, exploitation, or self-neglect.

## **II. Target Populations**

The target population discussed at Forensic Center meetings includes dependent adults between the ages of 18 to 64, and elders aged 65 and older that have been abused, neglected, exploited, or are that are demonstrating signs of self-neglect. The majority of Forensic Center cases that are reviewed are also clients to APS. However, the Forensic Center is a resource that can be accessed by other HSA programs, or by community based service providers in San Francisco that work with the target population.

## **III. Description of Services**

### **Grantee shall provide the following services during the term of this contract:**

- a. Grantee shall direct and coordinate all aspects of the San Francisco Elder Abuse Forensic Center, including reviewing referrals, facilitating twice monthly meetings, and facilitating communication between partners. In addition, the contractor shall develop a statistical database to capture such variables as incidence and types of abuse, breakdown of referrals by age, ethnicity, and neighborhoods in San Francisco. Grantee shall also collect statistics on the number of reports investigated by SFPD and the outcome of the investigation, including prosecutions by the DA's Office.
- b. Grantee shall facilitate quarterly meetings of the Elder Abuse Forensic Center Steering Committee, comprised of representatives of Forensic Center partners.
- c. Grantee shall facilitate Multidisciplinary Team (MDT) Meetings at least once per quarter. MDTs are case conferences that can include both Forensic Center partners and members of the provider community. Each MDT meeting shall also include an educational component. Grantee will coordinate with the APS Program Director to identify education component.
- d. Grantee shall update annually a Memorandum of Understanding with each participating partner of the Elder Abuse Forensic Center.
- e. In collaboration with the District Attorney's Office, the Medical Examiner's Office, and other Forensic Center partners, the grantee shall coordinate the Elder Death Review Team and its quarterly meetings.

## **IV. Location and Time of Services**

The Forensic Center will be co-located with Adult Protective Services at DAAS for some part of each week. DAAS will provide telephones, computer access, and desks for Forensic Center staff.

## **V. Grantee Responsibilities**

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

- a.) Develop work plans to carry out service and outcome objectives;
- b.) Adhere to HIPPA guidelines regarding confidentiality and safely maintaining and storing all program materials;
- c.) Comply with monitoring and reporting requirements;
- d.) Hold quarterly Steering Committee meetings to report on program progress.

## VI. Service Objectives

Service Area	Objectives
Direction/Coordination	<ul style="list-style-type: none"> <li>Facilitate twice monthly Elder Abuse Forensic Center Meetings.</li> <li>Coordinate and facilitate at least 4 MDT Meetings annually.</li> <li>Facilitate quarterly Elder Abuse Forensic Center Steering Committee Meetings.</li> </ul>
Outreach/Direction	<ul style="list-style-type: none"> <li>Provide at least one annual update/orientation re the Elder Abuse Forensic Center to APS staff to help ensure understanding of the Forensic Center's role in facilitating multi-disciplinary discussions of APS cases.</li> <li>On-going outreach to Forensic Center partner agencies to foster on-going commitment to the Center's mission and activities.</li> <li>Maintain an updated website for the Elder Abuse Forensic Center.</li> </ul>
Program Development	<ul style="list-style-type: none"> <li>Pursue funding opportunities to ensure the continued vitality of the Forensic Center</li> </ul>

**Please Note: The Grantee will have to be compliant with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy and security rules. For specific compliance requirements see Appendix G & H- HIPAA Business Associate Addendum.**

## VII. Outcome Objectives

Service Area	Outcome Objectives
Direction/Coordination	<ul style="list-style-type: none"> <li>Involving representatives of the partner agencies, conduct a year-end written evaluation of the Elder Abuse Forensic Center with a written summary of annual evaluation disseminated at the first Steering Committee meeting of the following contract year</li> <li>During the last year of the contract, carry out a satisfaction survey with Forensic Center partners and APS staff to evaluate effectiveness of the Contractor's coordination efforts. The Survey will</li> <li>During the last year of the contract, carry out a satisfaction survey with aging and disability community based partners, to evaluate the effectiveness of the quarterly MDT meetings and determine programmatic areas that need to be changed or updated.</li> </ul>

Outreach/Education	<ul style="list-style-type: none"> <li>Increase traffic to the Elder Abuse Forensic Center MDT quarterly meetings by 25%.</li> </ul>
Program Development	<ul style="list-style-type: none"> <li>Pursue appropriate grant funding opportunities for the Elder Abuse Forensic Center to ensure continuity of services.</li> </ul>

**VIII. Reporting Requirements**

- A. Grantee will provide a quarterly report of activities, referencing the tasks as described in Section IV– Description of Services, and VI- Service Objectives. Reports are due 15 days after the close of the reporting period and will be entered into the Contracts Administration Reporting & Billing Online (CARBON) system.
- B. Grantee will provide an annual report summarizing the contract activities, referencing the tasks as described in Section IV– Description of Services, VI- Service Objectives, and VII - Outcome Objectives. This report will also include accomplishments and challenges encountered by the Grantee. This report is due 15 days after the completion of the program year and will be entered into the CARBON system..
- C. The reports are also to be submitted electronically to the following staff:

Justin Chan, Contract Manager/HSA  
Justin.Chan@sfgov.org

Jill Nielsen, Program Director APS  
Jill.Nielsen@sfgov.org

Alternatively, reports can be mailed to the following addresses:

Human Services Agency  
P.O. Box 7988  
San Francisco, CA 94120

Department of Aging and Adult Services  
1650 Mission Street, 5<sup>th</sup> Floor  
San Francisco, CA 94103

**IX. Monitoring Activities**

- A. Program Monitoring: Program monitoring includes a review of quarterly reports and quarterly meetings between the Grantee and the APS Program Director to evaluate the status of the Grantee’s progress towards meeting the service and outcome objectives. Additionally, the Grantee has been observed by the APS Program Director facilitating Forensic Center meetings and carrying out coordination activities to facilitate an improved elder abuse response by Forensic Center partners. Future program monitoring activities will include an annual survey to Forensic Center partners and APS staff that utilize the Forensic Center to determine areas for quality improvement.
- B. Fiscal Compliance and Contract Monitoring: Fiscal monitoring includes a 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.

Program: Elder Abuse Forensic Center  
 (Same as Line 9 on HSA #1)

**Operating Expense Detail**

<u>Expenditure Category</u>	TERM			TOTAL
		<u>7/1/14-6/30/15</u>		<u>7/1/14-6/30/15</u>
Rental of Property		\$4,738		\$4,738
Office/Program Supplies, Postage		\$1,545		\$1,545
Training		\$1,700		\$1,700
Staff Travel-(Local & Out of Town)		\$1,100		\$1,100
CONSULTANT/SUBCONTRACTOR DESCRIPTIVE TITLE				
Medical Consultant		\$6,800		\$6,800
OTHER				
TOTAL OPERATING EXPENSE		\$15,883		\$15,883
<b>HSA #3</b>				<b>11/15/2007</b>



## **Appendix A – Services to be Provided**

**Effective July 1, 2014 to June 30, 2019**

### **Institute on Aging** **Community Living Fund - Case Management and Purchase of Services**

#### **I. Purpose of Grant**

The purpose of this grant is to provide case management and other services as part of the Community Living Fund (CLF) Program that is being administered by the Department of Aging and Adult Services. The CLF Program is used to fund services, or a combination of goods and services, that help individuals who are currently in or at imminent risk of being institutionalized.

The CLF Program is intended to reduce unnecessary institutionalization by providing older adults and younger adults with disabilities with options for where and how they receive assistance, care and support. The design of the CLF Program includes a two-pronged approach: (1) coordinated case management; and (2) purchase of services.

The CLF Program will provide the resources and services not available by other means, to vulnerable older adults and younger adults with disabilities.

The purposes of the Community Living Fund are to:

- Enable older adults and adults with disabilities who are eligible for this Fund to remain living safely in their own homes and communities as long as possible.
- Provide financial support for home and community-based long-term care and supportive services beyond what is currently available.
- Offer flexible funding to create “wrap-around” services that provide essential community-based assistance, care and support.
- Facilitate the development of service delivery models that strengthen the community-based long-term care systems and work force.
- Expand, not supplant, existing funding, in order to fill funding gaps until new sources of financial support for community-based long-term care services can be secured through federal Medicaid waivers and other means.

## II. Eligibility for Services under the CLF Program

In order to obtain services, an individual must, at a minimum, be:

- 18 years or older;
- Institutionalized or deemed, at assessment, to be at imminent risk of being institutionalized;
- A resident of San Francisco;
- Willing and able to live in the community with appropriate supports; and
- At an income level of 300% of federal poverty or less plus assets up to \$6000.

Further, an individual must have a demonstrated need for a service and/or resource that will serve to prevent institutionalization or enable community living.

Specific conditions or situations such as substance abuse or chronic mental illness shall not be a deterrent to services if the eligibility criteria are met.

## III. Definitions

**HSA:** Human Services Agency of the City and County of San Francisco

**DAAS:** Department of Aging and Adult Services

**Case Management:** Case management is a formal strategy that coordinates and facilitates access to a variety of services in a timely manner for people who need assistance in organizing and managing their care and/or supportive services. It includes a standardized process of client intake, assessment, care planning, care plan implementation, monitoring, reassessment and discharge/termination. Case management is an integral component of long term care service delivery and is central to accessing additional services through the CLF.

While some people can organize assistance, care and support for themselves, others need case management services to do this. Case managers assist the individual, family, and friends to identify the client's needs and options to meet them. Case managers arrange for services, when necessary, and provide assistance as client's needs change. Case managers, through the CLF program, will be the conduits to the CLF dollars set aside for the purchase of goods and services for clients.

Grantee will provide different levels of case management, as follows:

- Intensive (for unstable clients) case management (15 to 25 clients per case load) will be provided for persons with complex medical, cognitive, behavioral, and psychological needs who require a maximum amount of care and supervision and access to ongoing resources and services. Intensive case management for persons with chronic and acute complex needs will require extensive coordination of and access to a full range of social, behavioral, mental health, and medical services.

Institute on Aging

Community Living Fund – Case Management and Purchase of Services

Appendix A

Page 2

- o Case management will be provided for persons who require moderate to minimal assistance and support as well as access to one-time resources and services. This level of case management ensures stabilization and avoidance of hospitalization and nursing home placement.

**Grantee:** Institute on Aging. The Grantee will work in collaboration with other agencies or community-based organizations through sub-contracts or MOUs to provide the necessary variety of expertise and skills in order to: (1) provide case management services, staff, and organizational infrastructure; and (2) manage CLF Program dollars to provide needed goods, services, equipment and other resources not available through other means.

Expertise required. Participating agencies or community-based organizations must have staffing and expertise in the following areas:

- o Social work and/or nurse case managers with sufficient education and experience to perform all levels of case management that may be required by CLF clients. For example, case managers will have either: (a) a master’s degree in nursing, social work services, or related field, with a minimum of one-year case management experience with geriatric and younger disabled populations; or (b) a bachelor’s degree in nursing, social work services, or related field, with a minimum of five years case management experience with the geriatric and younger disabled populations.
- o Clinical supervision staffing with the education and experience necessary to supervise, direct and coordinate the work of the case managers. For example, clinical supervisors will have a master’s degree in nursing or social work services, or a related field, with a minimum of five years combined supervisory and case management experience with the geriatric and younger disabled populations.
- o Staffing and protocols for overseeing and verifying that the goods and services purchased for the clients by or through the Grantee comply with normal business practices, that all purchase(s) are reasonable in nature, that any and all request for the purchases of goods or services are not excessive in nature or cost, that the expenditure can be justified and verified, and that there is supporting documentation that can verify the expenditures.
- o Unique expertise in a variety of areas including, but not limited to: the elderly, younger adults with disabilities, mental health and substance abuse services, and housing.
- o Strong relationships with other programs that can enhance the expertise required for this contract. These include DPH Targeted Case Management, San Francisco General Hospital Social Services, Laguna Honda Hospital Social Services, other San Francisco acute care hospitals and Skilled Nursing Facilities and DPH and HSA housing.

**Imminent Risk of Institutionalization:** In order to be considered “at imminent risk of institutionalization”, an individual must have, at a minimum, one of the following:

- functional impairment in a minimum of two Activities of Daily Living (ADL): eating, dressing, transfer, bathing, toileting, and grooming; **or**
- a medical condition to the extent requiring the level of care that would be provided in a nursing facility; **or**
- be unable to manage his/her own affairs due to emotional and/or cognitive impairment.

### **III. Target Population**

The CLF Program will serve people whose incomes are up to 300% of the federal poverty level and who are unable to live safely in the community with existing supports and funding sources.

The following groups of people will be served:

- Top priority. Patients of Laguna Honda Hospital (LHH) and San Francisco General Hospital (SFGH) who are willing and able to be discharged to community living.
- Patients at other San Francisco acute care hospitals and skilled nursing facilities.
- Nursing home eligible individuals on the LHH waiting list (some of whom are at SFGH and other hospitals) who are willing and able to remain living in the community.
- Individuals who are at imminent risk for nursing home or institutional placement, willing and able to remain living in the community with appropriate support.

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

Program infrastructure must include, at a minimum:

- Administrative assistance, data entry, database maintenance, processing invoices, and making payments to vendors.
- Purchased service vendor contracts and procurement policies.
- Clinical supervision across all sub-contracted agencies.
- All accounting procedures and reporting functions
- A dedicated database to capture care planning, case management, client information tracking, purchased services and dollars spent to help older adults and younger adults with disabilities remain living in the community. Documentation is coordinated between all sub-contracted agencies to ensure that necessary data is reported consistently. The CLF database communicates with the DAAS DCIP database, which accesses data from multiple City programs and departments.

#### Purchase of Services Component

The grant includes funds with which the Grantee and their sub-contractors can purchase goods and services for their clients. The CLF will support a menu of services options and level of assistance, care, and support, and a range of housing, and supportive services. These services must be deemed necessary by a CLF case manager and the funds are only used as a last resort, when all other payment options for that service have been exhausted. Purchased services will

supplement other available resources to ensure that that each client receives the comprehensive array of appropriate services that are necessary to allow for community living.

The Grantee will:

- Coordinate all case management services through clinical supervision; including collaboration between multidisciplinary staff, across all sub-contracted organizations, through weekly scheduled case conferencing. There must be strong collaboration to share expertise.
- Work collaboratively with other community organizations presently working with the client and additional ones who can provide specific expertise.
- Ensure that the purchase of all proposed goods and services is reasonable, prudent and properly procured.
- Work collaboratively with DAAS Long Term Care Director to strategize program direction.
- Develop and maintain collaborations with both City departments and community programs in order to reach the target population that is be eligible for the services supported by the CLF program
- CLF is part of the Diversion and Community Integration Program (DCIP), a long-term-care collaboration of DAAS, DPH and community partners. CLF provides the community intensive case management for DCIP enrolled individuals and is an integral part of the Team. Grantee must attend bi-weekly DCIP meetings.
- To support a CLF Advisory Council to provide a forum for consumer and community feedback. Members should include current and former program participants as well as representatives from community agencies.
- Mail out consumer satisfaction surveys annually (at a minimum) to gather additional input from participants regarding their direct experience in an anonymous format.
- Work closely with DAAS Planning Unit staff to ensure appropriate and accurate collection of data for evaluation and program design analysis. In addition, Grantee will work with DAAS in an ongoing evaluation of the program.
- Continue to utilize the CLF dedicated database--developed with RTZ Associates Inc for the CLF program that tracks client information, assessments, care plans, progress notes, service authorizations and purchased services.

CBAS Component

With the conversion of the Medi-Cal Adult Day Health Care (ADHC) benefit to Community Based Adult Services (CBAS), eligible San Francisco CBAS participants have moved into one of two SF managed care plans: SF Health Plan and Anthem Blue Cross. SF Health Plan is contracting with DAAS to provide assessment and case management services for CBAS participants enrolled in their health plan. DAAS will provide these services through CLF infrastructure. The expectation is a census of 400 or more.

## **V. Department Responsibilities (DAAS)**

DAAS Long Term Care (LTC) Intake and Screening Unit. All referrals to the CLF Program come through the DAAS LTC Intake and Screening Unit, which is the initial entry point for accessing the fund. This Unit is the “central door” of the “No Wrong Door” model of improved access to services. While community-based long-term care services can be accessed in many ways, CLF is the Fund of last resort and any request for support from the CLF Program must come through this Unit. The LTC Intake and Screening Unit complete an initial screening and refer those presumed eligible for the fund to the CLF Contractor.

DAAS will access other funding. DAAS will leverage CLF Program funding by qualifying for state and federal funding available through programs such as the Community Services Block Grant (CSBG) Program. The Grantee is required to provide time certifications for staff involved in service delivery and service support activities.

## **VI. Collaborative Responsibilities (DAAS and Grantee)**

Management of the CLF wait list is an important consideration for the CLF Grantee and DAAS. Financial considerations, prioritizations and trends will be taken into consideration when pertaining to strategies and decisions for caseload and wait list management.

The DAAS Long Term Care Director, the DAAS Long Term Care Intake and Screening Unit, and the selected Grantee will collaborate on undertaking outreach activities, as necessary, to ensure that the needs of the groups of people in the target population are identified and addressed.

DAAS Director of Quality Management and CLF Director will collaborate to develop a Quality Assurance plan and process that fulfills the needs of both parties and the clients.

## **VII. Service Objectives**

*On an annual basis, Grantee will meet the following service objectives:*

- Objective 1. Number of unduplicated consumers receiving intensive case management and/or purchased services. Target = 350.
- Objective 2. 80 percent of care plan problems resolved, on average, after one year of enrollment in CLF (excluding clients with ongoing purchases).

## **VIII. Outcome Objectives**

DAAS is committed to measuring the impact of its investments in community services.

*On an annual basis and as needed, Grantee will report progress towards meeting the following outcome Objectives:*

- Objective 1. Successfully support community living for a period of at least six months for at least 80% of CLF clients who are being discharged from LHH at the time of enrollment. Identify reasons for re-institutionalization when it occurs.
- Objective 2. Successfully support community living for a period of at least six months for at least 80% of CLF clients who were at imminent risk of institutionalization at the time of enrollment. Identify reasons for institutionalization when it occurs.
- Objective 3. 80 percent of clients with one or fewer admissions to an acute care hospital within a six month period; 70 percent will have no admissions to an acute care hospital within a six month period.

## **IX. Reporting Requirements**

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

- A. Grantee will provide an annual report summarizing the contract activities, referencing the tasks as described in Section IV– Description of Services, VI- Service Objectives, and VII - Outcome Objectives. This report will also include accomplishments and challenges encountered by the Contractor. This report is due 45 days after the completion of the program year.
- B. On an annual basis, Grantee will provide results of the Client and Provider Satisfaction Surveys. This may or may not be provided at the same time as the annual report.
- C. Quarterly and Annual Reports will be entered into the Contracts Administration, Billing and Reporting Online (CARBON) system.
- D. Grantee shall develop and deliver ad hoc reports as requested by HSA.
- E. Reports requested to be sent via e-mail to the Program Analyst and/or Contract Manager to the following addresses:

Carrie Wong, Program Manager  
 DAAS, Office on the Aging  
 PO Box 7988  
 San Francisco, CA 94120

[Carrie.Wong@sfgov.org](mailto:Carrie.Wong@sfgov.org)

David Flores, Jr., MPA, Principal Administrative Analyst (Worker #G700)  
 Office of Contracts Management  
 Human Services Agency  
 PO Box 7988  
 San Francisco, CA 94120

[David.Flores@sfgov.org](mailto:David.Flores@sfgov.org)

## **X. Monitoring Activities**

A. Program Monitoring: Program monitoring will include review of compliance to specific program standards or requirements; client eligibility and targeted mandates, back up documentation for the units of service and all reporting, and progress of service and outcome objectives; how participant records are collected and maintained; reporting performance including monthly service unit reports, maintenance of service unit logs; agency and organization standards, which include current organizational chart, evidence of provision of training to staff regarding the Elder Abuse Reporting; program operation, which includes a review of a written policies and procedures manual of all OOA funded programs, written project income policies if applicable, grievance procedure posted in the center/office, and also given to the consumers who are homebound, hours of operation are current according to the site chart; a board of director list and whether services are provided appropriately according to Sections VI and VII.

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.



Program Name:  
(Same as Line 9 on HSA #1)

### Purchase of Service Detail

<u>Purchase of Service Category</u>	TERM	<u>7/1/14- 6/30/15</u>	<u>7/1/15- 6/30/16</u>	<u>7/1/16- 6/30/17</u>	<u>7/1/17- 6/30/18</u>	<u>7/1/18-6/30/19</u>	<u>TOTAL</u>
Global Purchase of Services		\$1,020,091	\$1,005,948	\$982,575	\$958,967	\$935,123	\$4,902,704
TOTAL PURCHASE OF SERVICE EXPENSE		\$1,020,091	\$1,005,948	\$982,575	\$958,967	\$935,123	\$4,902,704
<b>HSA #4</b>						<b>1/0/1900</b>	<b>5/23/2013</b>

## Appendix C – Method of Payment

- I. In accordance with Section 5 of the Grant Agreement, payments shall be made for actual costs incurred and reported for each month. Under no circumstances shall payment exceed the amount set forth in Section 5 Compensation of the Agreement.
- II. Grantee will submit all bills, invoices and related documentation in the format specified by SFHSA within 15 days after the month of service to SFHSA’s web-based Contracts Administration, Reporting, and Billing Online (CARBON) System at: <https://contracts.sfhhsa.org>  
  
Grantee may submit bills, invoices and related documentation in the format specified by SFHSA via paper or email only upon special permission by their assigned Contract Manager.
- III. Grantee must sign up to receive payments electronically via Automated Clearing House (ACH). Remittance information will be provided through Paymode-X. Additional information and sign up is available at: <http://www.sfgov.org/ach>
- IV. The Executive Director or CFO must submit a letter of authorization designating specific users who will have access to CARBON to electronically submit and sign for invoices, budget revision requests, program reports, and view other information that is in CARBON.
  - A. Submittal of the invoice by designated authorized personnel with proper login credentials constitutes an electronic signature and certification of the invoice.
  - B. Authorized personnel with CARBON login credentials shall not share or internally reassign logins.
  - C. Grantee shall notify SFHSA Contract Manager immediately regarding any need for the restriction or termination of a previously authorized CARBON login.
- V. Invoices shall include actual expenditures incurred during the month, unless otherwise specified.
  - A. The invoice supplied shall include the total dollar amount claimed for the month.
  - B. There shall be no variance from the line item budget submitted which adversely affects program performance as contained in the Grantee’s proposal and specified in the grant.
  - C. The invoice shall show by line item:
    1. Budgeted amount (per approved grant budget or modification)
    2. Expenses for invoice period
    3. Expenses year-to-date
    4. % of budget expended
    5. Remaining balance
    6. Adjustments, including advance payment recovery
    7. Program income when specified in the grant agreement.
  - D. Personnel expenditures will show same line item categories by position detail. Detail will show name of employee, position name, %FTE and budgeted salary.
  - E. With written approval from SFHSA Program/Contract Manager, Grantee may adjust items within the existing budget of the grant in accordance with SFHSA Office of Contract Management Policy for Budget Line Item Revisions.
  - F. Supporting Documentation, except as discussed below need not be submitted with the invoice. However, Grantee must keep and make available as requested such supporting documentation for all expenditures for which reimbursement is requested for all costs so claimed. All charges incurred shall be due and payable only after services have been rendered, except as stated otherwise. Supporting documentation must be uploaded into CARBON and submitted along with the invoice.

- Documentation should be submitted with the invoice for all payroll expenses paid to budgeted personnel for the period covered by the invoice. Payroll information can be from a payroll service or a payroll ledger from the Grantee's accounting system
- For any and all non-recurring expenditures (e.g. equipment purchases/capital upgrades and building repair and upgrades) and/or items that exceed \$5,000, Grantee shall supply back-up documentation in the form of a paid invoice(s).
- Indirect costs shall not be applied to non-reoccurring expenses.
- All subcontracted services must be documented by submission of the subcontractor's paid invoice, regardless of dollar amount.
- If this grant agreement contains any Pass-Through funding requiring specific expense documentation from the source agency, Federal, State, Private or other then the following documentation shall also be included with each invoice submission:

Funding Agency: \_\_\_\_\_ CFDA or other Identification #: \_\_\_\_\_

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

- VI. Following SFHSA verification of submitted Invoice with required documentation of incurred expenses via CARBON, SFHSA will authorize payment within 10 business days after receipt of the invoice.
- VII. Within 45 days after the end of the grant period, Grantee shall submit a final report reflecting actual expenditures, which will be supported by the Grantee's accounting records. If a refund is due SFHSA, it will be submitted with the final report.
- VIII. Advances or prepayments are allowable in order to meet the Grantee cash flow needs in certain unique circumstances. The Agency, at its sole discretion, shall make available to the Grantee upon written request an advance amount not to exceed two (2) months or 1/6<sup>th</sup> of the total annualized grant award, or as mutually agreed upon. The advanced sum shall be deducted from the Grantee's monthly invoices at an equal rate each month that will enable repayment by the tenth month of the fiscal year. For a twelve-month grant the rate of repayment of the advance will be 1/10<sup>th</sup> per month from July to April. Requests for advance payment will be granted on a case-by-case basis and are not intended to be a regular "automatic" procedure. Approval will be a consensus of Program and Contract Staff.

Once the grant is certified, the Grantee, prior to distribution of any advanced payment, must fulfill the following conditions:

- 1. All contractual compliance requirements must be current, i.e., reports submitted and approved, corrective actions resolved, business tax and insurance certificates in place, prompt and fully documented billings.

2. The Grantee shall submit a written request with a narrative justification that fully describes the unique circumstances to the Program Manager and Contract Manager for review and approval.
  3. Final invoice from the preceding fiscal year must be received prior to advance distribution.
- IX. Timely Submission of Reports – If reports/documents are required, Grantee shall submit these reports prior to submitting invoices. Failure to submit required reports/documents in CARBON by specified deadlines may result in withholding of grant payments.

## Appendix E-Permitted Subgrantees

*Catholic Charities CYO*  
*Conard House*  
*Progress Foundation*

**Appendix F**  
**Additional Terms**  
**Healthcare Insurance Portability and Accountability Act of 1996 ("HIPAA")**

**1. HIPAA**

The parties acknowledge that CITY is a Covered Entity as defined in the Healthcare Insurance Portability and Accountability Act of 1996 ("HIPAA") and is therefore required to abide by the Privacy Rule contained therein. The parties further agree that CONTRACTOR falls within the following definition under the HIPAA regulations:

- A Covered Entity subject to HIPAA and the Privacy Rule contained therein; or
- A Business Associate subject to the terms set forth in Appendix E;
- Not Applicable, CONTRACTOR will not have access to Protected Health Information.

**2. HUMAN SERVICES AGENCY PRIVACY AND DATA SECURITY POLICIES**

- A. The Human Services Agency (HSA) has developed Privacy and Data Security Policies that encompass all federal and state confidentiality and data security regulations, including HIPAA and local policies.

CONTRACTORS agree to abide by the HSA Privacy and Data Security Policies, unless otherwise granted a waiver from certain policies by HSA, and will be monitored and evaluated on the following criteria:

- B. HSA Privacy Policy is integrated in the program's governing policies and procedures regarding patient privacy and confidentiality.

As Measured by: Evidence that the policy and procedures that abides by the rules outlined in the HSA Privacy Policy have been adopted, approved and implemented.

- C. All staff that handles patient health information are trained (including new hires) and annually updated in the program's privacy/confidentiality policies and procedures.

As Measured by: Documentation exists showing individuals were trained.

- D. A Privacy Notice that meets the requirements of the Federal Privacy Rule (HIPAA) is written and provided to all patients/clients served in their threshold and other languages. If document is not available in the patient's/client's relevant language, verbal translation is provided.

As Measured by: Evidence in patient's/client's chart or electronic file that patient was "noticed." (Examples in English, Cantonese, Vietnamese, Tagalog, Spanish, Russian will be provided.)

- E. A Summary of the above Privacy Notice is posted and visible in registration and common areas of treatment facility.

As Measured by: Presence and visibility of posting in said areas. (Examples in English, Cantonese, Vietnamese, Tagalog, Spanish, Russian will be provided.)

- F. Each disclosure of a patient's/client's health information for purposes other than treatment, payment, or operations is documented.

As Measured by: Documentation exists

- G. Authorization for disclosure of a patient's/client's health information is obtained prior to release (1) to providers outside the HSA Safety Net or (2) from a substance abuse program.

As Measured by: An authorization form that meets the requirements of the Federal Privacy Rule (HIPAA) is signed and in patient's/client's chart/file

### **3. THIRD PARTY BENEFICIARIES**

No third parties are intended by the parties hereto to be third party beneficiaries under this Agreement, and no action to enforce the terms of this Agreement may be brought against either party by any person who is not a party hereto.

### **4. CERTIFICATION REGARDING LOBBYING**

CONTRACTOR certifies to the best of its knowledge and belief that:

- A. No federally appropriated funds have been paid or will be paid, by or on behalf of CONTRACTOR to any persons for influencing or attempting to influence an officer or an employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the entering into of any federal cooperative agreement, or the extension, continuation, renewal, amendment, or modification of a federal contract, grant, loan or cooperative agreement.
- B. If any funds other than federally appropriated funds have been paid or will be paid to any persons for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, CONTRACTOR shall complete and submit Standard Form -111, "Disclosure Form to Report Lobbying," in accordance with the form's instructions.
- C. CONTRACTOR shall require the language of this certification be included in the award documents for all subawards at all tiers, (including subcontracts, subgrants, and contracts under grants, loans and cooperation agreements) and that all subrecipients shall certify and disclose accordingly.
- D. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## **5. MATERIALS REVIEW**

CONTRACTOR agrees that all materials, including without limitation print, audio, video, and electronic materials, developed, produced, or distributed by personnel or with funding under this Agreement shall be subject to review and approval by the Contract Administrator prior to such production, development or distribution. CONTRACTOR agrees to provide such materials sufficiently in advance of any deadlines to allow for adequate review. CITY agrees to conduct the review in a manner which does not impose unreasonable delays.



## Appendix G

# BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum (“Addendum”) supplements and is made a part of the contract (“Contract”) by and between the City and County of San Francisco, Covered Entity (“CE”) and Contractor, Business Associate (“BA”).

### RECITALS

- A. CE wishes to disclose certain information to BA pursuant to the terms of the Contract, some of which may constitute Protected Health Information (“PHI”) (defined below).
- B. CE and BA intend to protect the privacy and provide for the security of PHI disclosed to BA pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws.
- C. As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require CE to enter into a contract containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(a) and (e) and 164.504(e) of the Code of Federal Regulations (“C.F.R.”) and contained in this Addendum.

In consideration of the mutual promises below and the exchange of information pursuant to this Addendum, the parties agree as follows:

#### 1. Definitions

- a. **Breach** shall have the meaning given to such term under the HITECH Act and HIPAA Regulations [42 U.S.C. Section 17921 and 45 C.F.R. Section 164.402].
- b. **Breach Notification Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and D.
- c. **Business Associate** shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including, but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.
- d. **Covered Entity** shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.
- e. **Data Aggregation** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- f. **Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- g. **Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.
- h. **Electronic Health Record** shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.

- i. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- j. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- k. **Protected Health Information or PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the part, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].
- l. **Protected Information** shall mean PHI provided by CE to BA or created, maintained, received or transmitted by BA on CE's behalf.
- m. **Security Incident** shall have the meaning given to such term under the Security Rule, including, but not limited to, 45 C.F.R. Section 164.304.
- n. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- o. **Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h) and 45 C.F.R. Section 164.402.

## 2. **Obligations of Business Associate**

- a. **Permitted Uses.** BA shall use Protected Information only for the purpose of performing BA's obligations under the Contract and as permitted or required under the Contract and Addendum, or as required by law. Further, BA shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by CE. However, BA may use Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE [45 C.F.R. Sections 164.504(e)(2) and 164.504(e)(4)(i)].
- b. **Permitted Disclosures.** BA shall disclose Protected Information only for the purpose of performing BA's obligations under the Contract and as permitted or required under the Contract and Addendum, or as required by law. BA shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by CE. However, BA may disclose Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (ii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE. If BA discloses Protected Information to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Addendum and used or disclosed only as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BA of any breaches, suspected

breaches, security incidents, or unauthorized uses or disclosures of the Protected Information in accordance with paragraph 2. m. of the Addendum, to the extent it has obtained knowledge of such occurrences [42 U.S.C. Section 17932; 45 C.F.R. Section 164.504(e)].

- c. **Prohibited Uses and Disclosures.** BA shall not use or disclose PHI other than as permitted or required by the Contract and Addendum, or as required by law. BA shall not use or disclose Protected Information for fundraising or marketing purposes. BA shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates [42 U.S.C. Section 17935(a) and 45 C.F.R. Section 164.522(a)(vi)]. BA shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of CE and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2), and the HIPAA regulations, 45 C.F.R. Section 164.502(a)(5)(ii); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to the Contract.
- d. **Appropriate Safeguards.** BA shall implement appropriate safeguards to prevent the use or disclosure of Protected Information other than as permitted by the Contract or Addendum, including, but not limited to, administrative, physical and technical safeguards in accordance with the Security Rule, including, but not limited to, 45 C.F.R. Sections 164.308, 164.310, and 164.312. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. BA shall comply with the policies and procedures and documentation requirements of the Security Rule, including, but not limited to, 45 C.F.R. Section 164.316. [42 U.S.C. Section 17931]
- e. **Business Associate's Subcontractors and Agents.** BA shall ensure that any agents and subcontractors that create, receive, maintain or transmit Protected Information on behalf of BA, agree in writing to the same restrictions and conditions that apply to BA with respect to such Protected Information and implement the safeguards required by paragraph 2.d. above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. BA shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. Sections 164.530(f) and 164.530(e)(1)).
- f. **Accounting of Disclosures.** Within ten (10) calendar days of a request by CE for an accounting of disclosures of Protected Information or upon any disclosure of Protected Information for which CE is required to account to an individual, BA and its agents and subcontractors shall make available to CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935 (c), as determined by CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents and subcontractors for at least six(6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an Electronic Health Record. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. If a patient submits a request for an accounting directly to BA or its agents or subcontractors, BA shall forward the request to CE in writing within five(5) calendar days.

- g. **Governmental Access to Records.** BA shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to CE and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining BA's compliance with HIPAA [45 C.F.R. Section 164.504(e)(2)(ii)(I)]. BA shall provide CE a copy of any Protected Information and other documents and records that BA provides to the Secretary concurrently with providing such Protected Information to the Secretary.
- h. **Minimum Necessary.** BA, its agents and subcontractors shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure. [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)] BA understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."
- i. **Data Ownership.** BA acknowledges that BA has no ownership rights with respect to the Protected Information.
- j. **Notification of Possible Breach.** BA shall notify CE within twenty-four (24) hours of any suspected or actual breach of Protected Information; any use or disclosure of Protected Information not permitted by the Contract or Addendum; any security incident (i.e., any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system) related to Protected Information, and any actual or suspected use or disclosure of data in violation of any applicable federal or state laws by BA or its agents or subcontractors. The notification shall include, to the extent possible, the identification of each individual who unsecured Protected Information has been, or is reasonably believed by the business associate to have been, accessed, acquired, used, or disclosed, as well as any other available information that CE is required to include in notification to the individual, the media, the Secretary, and any other entity under the Breach Notification Rule and any other applicable state or federal laws, including, but not limited, to 45 C.F.R. Section 164.404 through 45 C.F.R. Section 164.408, at the time of the notification required by this paragraph or promptly thereafter as information becomes available. BA shall take (i) prompt corrective action to cure any deficiencies and (ii) any action pertaining to unauthorized uses or disclosures required by applicable federal and state laws. (This provision should be negotiated.) [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)]
- k. **Breach Pattern or Practice by Business Associate's Subcontractors and Agents.** Pursuant to 42 U.S.C. Section 17934(b) and 45 C.F.R. Section 164.504(e)(1)(ii), if the BA knows of a pattern of activity or practice of a subcontractor or agent that constitutes a material breach or violation of the subcontractor or agent's obligations under the Contract or Addendum or other arrangement, the BA must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the BA must terminate the Contract or other arrangement if feasible. BA shall provide written notice to CE of any pattern of activity or practice of a subcontractor or agent that BA believes constitutes a material breach or violation of the subcontractor or agent's obligations under the Contract or Addendum or other arrangement within five (5) days of discovery and shall meet with CE to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

### 3. Termination

- a. **Material Breach.** A breach by BA of any provision of this Addendum, as determined by CE, shall constitute a material breach of the Contract and shall provide grounds for immediate termination of the

Contract, any provision in the Contract to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii)].

- b. Judicial or Administrative Proceedings.** CE may terminate the Contract, effective immediately, if (i) BA is named as defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.
- c. Effect of Termination.** Upon termination of the Contract for any reason, BA shall, at the option of CE, return or destroy all Protected Information that BA and its agents and subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by CE, BA shall continue to extend the protections and satisfy the obligations of Section 2 of this Addendum to such information, and limit further use and disclosure of such PHI to those purposes that make the return or destruction of the information infeasible [45 C.F.R. Section 164.504(e)(ii)(2)(J)]. If CE elects destruction of the PHI, BA shall certify in writing to CE that such PHI has been destroyed in accordance with the Secretary's guidance regarding proper destruction of PHI.
- d. Disclaimer**

CE makes no warranty or representation that compliance by BA with this Addendum, HIPAA, the HITECH Act, or the HIPAA Regulations will be adequate or satisfactory for BA's own purposes. BA is solely responsible for all decisions made by BA regarding the safeguarding of PHI.

#### **4. Amendment to Comply with Law.**

The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Contract or Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations and other applicable state or federal laws relating to the security or confidentiality of PHI. The parties understand and agree that CE must receive satisfactory written assurance from BA that BA will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable laws. CE may terminate the Contract upon thirty (30) days written notice in the event (i) BA does not promptly enter into negotiations to amend the Contract or Addendum when requested by CE pursuant to this section or (ii) BA does not enter into an amendment to the Contract or Addendum providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

#### **5. Reimbursement for Fines**

In the event that CE pays a fine to a state or federal regulatory agency based on an impermissible use or disclosure of PHI by BA or its subcontractors or agents, then BA shall reimburse CE in the amount of such fine within thirty (30) calendar days.

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

**GRANT AGREEMENT**

between

CITY AND COUNTY OF SAN FRANCISCO

and

**INSTITUTE ON AGING**

**THIS GRANT AGREEMENT** (this "Agreement") is made this 1<sup>st</sup> day of **July**, 2014, in the City and County of San Francisco, State of California, by and between **Institute on Aging, 3575 Geary Blvd, San Francisco, CA 94118** ("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) seeking a grant, for the purpose of funding the matters set forth in the Grant Plan (as hereinafter defined); and summarized briefly as follows:

**Community Living Fund Case Management and Purchase of Services for seniors and adults with disabilities; and**

**WHEREAS**, approval for said Agreement was obtained when the Civil Service Commission approved Grant Number **4081-10/11** on **March 7, 2011**; and

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

**NOW, THEREFORE**, in consideration of the promises 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.
- (c) “**Application Documents**” shall mean collectively: (i) the grant application submitted by Grantee, including all exhibits, schedules, appendices and attachments thereto; (ii) all documents, 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
- (n) “**HRC**” shall mean the Human Rights Commission of 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.

**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 "subgrantee," "successor" or "assign" herein refers only to a subgrantee ("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 21.10-1 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, 2014 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, 2019

### 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 subgrantees 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 **SIXTEEN MILLION SEVEN HUNDRED SIXTEEN THOUSAND SIX HUNDRED FIFTY FIVE** Dollars (\$16,716,655) for the period from **JULY 1, 2014 – JUNE 30, 2019, plus any contingent amount authorized by City and certified as available by the Controller.**

**Contingent amount:** Up to **ONE MILLION SIX HUNDRED SEVENTY ONE THOUSAND SIX HUNDRED SIXTY FIVE** Dollars (\$1,671,665) for the period from **JULY 1, 2014 – JUNE 30, 2019, may be available, in the City's sole discretion, as a contingency subject to authorization by the City and certified as available by the Controller.**

The maximum amount of Grant Funds disbursed hereunder shall not exceed **EIGHTEEN MILLION THREE HUNDRED EIGHTY EIGHT THOUSAND THREE HUNDRED TWENTY** Dollars (\$18,388,320) for the period from **JULY 1, 2014 – JUNE 30, 2019.**

Grantee understands that, of the maximum dollar disbursement listed in Section 5.1 of this Agreement, **the amount shown as the Contingent Amount may not be used in Program Budgets attached to this Agreement as Appendix B, and is not available to Grantee without a revision to the Program Budgets of Appendix B specifically approved by Grant Agreement Administrator.** Grantee further understands that no payment of any portion of this contingency amount will be made unless and until such funds are certified as available by Controller. Grantee agrees to fully comply with these laws, regulations, and policies/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 OMB Circular A-122, 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 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 Disallowance and Single Audit Requirements:** If Grantee claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States 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. 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. **Single Audit Requirements:** Grantees that expend \$500,000 or more in a year from any and all Federal awards shall have a single audit conducted in accordance with OMB Circular A-133. Grantees that expend less than \$500,000 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.

## 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 OMB Circular A-133, 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, 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.** Pursuant to San Francisco Administrative Code §21.35, any grantee, subgrantee or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. A grantee, subgrantee or consultant will be deemed to have submitted a false claim to the City if the grantee, subgrantee 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.** Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

(a) Grantee shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty (30) days following the date on which this Agreement becomes effective (unless Grantee has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Grantee; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

(b) Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Grantee of the terms of this Agreement. If, within thirty (30) days after Grantee receives written notice of such a breach, Grantee fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Grantee fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

(c) Any Subgrant entered into by Grantee shall require the subgrantee to comply, as to the subgrantee's Eligible Employees, with each of the terms of this section.

(d) Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

## 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 Subgrants.** 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.
- (c) Commercial Automobile Liability Insurance with limits not less than one million dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- (d) Professional liability insurance for negligent acts, errors or omission with respect to professional or technical services, if any, required in the performance of this Agreement with limits not less than one million dollars (\$1,000,000) each claim.

**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 Waiver.** Left blank by agreement of the Parties.

**10.9 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.

**10.10** 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.

**10.11** 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.

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

**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.

## ARTICLE 13 ASSIGNMENTS AND SUBGRANTING

**13.1 No Assignment by Grantee.** Grantee shall not, either directly or indirectly, assign, transfer, hypothecate, subgrant 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 Subgranting.** If Appendix E lists any permitted subgrantees, then notwithstanding any other provision of this Agreement to the contrary, Grantee shall have the right to subgrant 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 subgrant or delegate the whole of the Grant Plan. Grantee may subgrant 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 subgrantee 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 subgranted 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 subgrantee 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 Subgrant.** Each subgrant 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 subgrant shall incorporate all of the terms of this Agreement, insofar as they apply to the subgranted portion of the Grant Plan. Without limiting the scope of the foregoing, each subgrant 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 subgrant 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 GRANTEE 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 Grant Management  
   P.O. Box 7988  
   San Francisco, CA 94120-7988  
   Facsimile No. 415-557-5679

If to Grantee:                            Institute on Aging  
   3330 Geary Blvd, 2<sup>nd</sup> Floor  
   San Francisco, CA 94118  
   Attn: J.Thomas Briody  
   Facsimile No. (415) 750-4179  
   Email: tbriody@ioaging.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 Left Blank by Agreement of the Parties**

**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.** As a condition to this Agreement, Grantee shall execute the "Chapter 12B Declaration: Nondiscrimination in Grants and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

(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 require 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. Grantee 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 Grantee's obligations under the MCO is set forth in this Section. Grantee is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Grantee to pay Grantee'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 Grantee is obligated to keep informed of the then-current requirements. Any subgrant entered into by Grantee shall require the subgrantee 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 Grantee's obligation to ensure that any subgrantees of any tier under this Agreement comply with the requirements of the MCO. If any subgrantee under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Grantee.

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

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

f. Grantee'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 Grantee fails to comply with these requirements. Grantee agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Grantee's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Grantee 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, Grantee fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Grantee fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, 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. Grantee represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

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

#### **16.9. Requiring Health Benefits for Covered Employees**

Grantee agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Grantee shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Grantee chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Grantee is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Grantee's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Grantee if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Grantee fails to cure such

breach or, if such breach cannot reasonably be cured within such period of 30 days, Grantee fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subgrant entered into by Grantee shall require the Subgrantee to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Grantee shall notify City's Office of Grant Administration when it enters into such a Subgrant and shall certify to the Office of Grant Administration that it has notified the Subgrantee of the obligations under the HCAO and has imposed the requirements of the HCAO on Subgrantee through the Subgrant. Each Grantee shall be responsible for its Subgrantees' compliance with this Chapter. If a Subgrantee fails to comply, the City may pursue the remedies set forth in this Section against Grantee based on the Subgrantee's failure to comply, provided that City has first provided Grantee with notice and an opportunity to obtain a cure of the violation.

e. Grantee shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Grantee's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

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

g. Grantee shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Grant.

h. Grantee shall keep itself informed of the current requirements of the HCAO.

i. Grantee shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subgrantees and Subtenants, as applicable.

j. Grantee shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Grantee shall allow City to inspect Grantee's job sites and have access to Grantee's employees in order to monitor and determine compliance with HCAO.

l. City may conduct random audits of Grantee to ascertain its compliance with HCAO. Grantee agrees to cooperate with City when it conducts such audits.

m. If Grantee is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Grantee later enters into an agreement or agreements that cause Grantee's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Grantee and the City to be equal to or greater than \$75,000 in the fiscal year.

**16.10 Limitations on Contributions.** Through execution of this Agreement, Grantee acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who 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. Grantee 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. Grantee further acknowledges that the prohibition on contributions applies to each prospective party to the grant; each member of Grantee's board of directors; Grantee's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Grantee; any subgrantee listed in the bid or grant; and any committee that is sponsored or controlled by Grantee. Additionally, Grantee acknowledges that Grantee must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

#### **16.11 First Source Hiring Program.**

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

**b. First Source Hiring Agreement.** As an essential term of, and consideration for, any grant or property grant with the City, not exempted by the FSHA, the Grantee shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the grant or property grant. Grantees shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

(1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

(2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

(3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term 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 this Chapter. 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 this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

(6) Set the term of the requirements.

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

(8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

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

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

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

**e. Liquidated Damages.** Grantee agrees:

(1) To be liable to the City for liquidated damages as provided in this section;

(2) To be subject to the procedures governing enforcement of breaches of grants based on violations of grant provisions required by this Chapter as set forth in this section;

(3) That the grantee's commitment to comply with this Chapter is a material element of the City's consideration for this grant; that the failure of the grantee to comply with the grant provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the grantee from the first source hiring process, as determined by the FSHA during its first investigation of a grantee, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the grantee's failure to comply with its first source referral contractual obligations.

(4) That the continued failure by a grantee 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 grantee'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 grantee to comply with its first source referral contractual obligations.

(6) That the failure of grantees to comply with this Chapter, except property grantees, 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. **Subgrants.** Any subgrant entered into by Grantee shall require the subgrantee to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

**16.12 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.

**16.13 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.

**16.14 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.

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

**16.16 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.

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

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

**16.18 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.

**16.19 Slavery Era Disclosure. Left Blank by Agreement of the Parties**

**16.20 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.

**16.21. 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.

## **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/nprgrantingtf\\_index.asp?id=1270](http://www.sfgov.org/site/nprgrantingtf_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.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first specified herein.

**CITY**

HUMAN SERVICES AGENCY

By: 

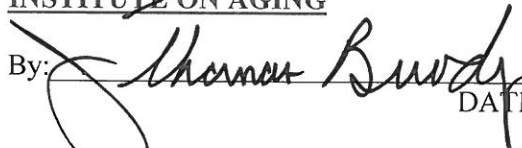
Trent Rhorer Date  
Executive Director  
Human Services Agency

**GRANTEE:**

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

I have read and understood paragraph 16.3, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

**INSTITUTE ON AGING**

By:  3-17-14  
DATE

Print Name: J. Thomas Briody, MHSc

Title: President & CEO

Address: 3575 Geary Blvd

City, State ZIP: San Francisco, CA 94118

Phone: (415) 750-4100

Federal Tax ID #: 94-2978977

City Vendor Number: 30891

**Approved as to Form:**

Dennis J. Herrera  
City Attorney

By:  4/2/14

Sherri Sokeland Kaiser Date  
Deputy City Attorney

**APPENDIX A –SERVICES TO BE PROVIDED BY GRANTEE  
INSTITUTE ON AGING**

**EFFECTIVE JULY 1, 2014 TO JUNE 30, 2017**

**CITYWIDE CASE MANAGEMENT CLINICAL SUPERVISION/CONSULTATION SERVICE**

**I. Purpose**

The purpose of this grant is to improve the knowledge, skills, and performance of community case managers working with seniors and adults with disabilities; and to maintain agency excellence in the provision of case management services.

The primary focus of this service model is to provide clinical support for individual case managers to improve the services delivered to their clients, to provide professional growth for the individual case manager and to help deter staff burnout. This model of service also assists with the implementation and monitoring of the case management program standards developed in 2005. The Citywide Case Management Clinical Supervisor/ Consultant will provide such resources by bringing together community case managers from OOA-funded case management agencies for group and individual supervision meetings, clinical oversight and consultation. The agencies that participate and utilize the service are the core members of the Citywide Case Management Clinical Supervision/ Consultation Collaborative.

The Clinical Supervisor/Consultant will also be working with DAAS Quality Management Director and the Training Institute sponsored by DAAS to ensure that the case managers through those training opportunities will be able to utilize the new skills learned.

As OOA has implemented a new Case Management and Medication Management Module, the Citywide Clinical Supervisor/ Consultant will also work closely with the Case Management Module Project Manager, DAAS Quality Management Director and OOA staff in relation to the implementation of the Module.

In general, the Clinical Supervisor/ Consultant provides a more advanced and intensive clinical supervision/ consultation to case managers of community-based service organizations funded by OOA.

**II. Definitions**

Adult with Disability	Person age 18 and above with a condition attributable to mental or physical impairment, or a combination of mental and physical impairments including hearing and visual impairments, that results in substantial functional limitations in one (1) or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, economic self-sufficiency, cognitive functioning, and emotional adjustment.
-----------------------	---

Adverse Drug Reaction (ADR)	Adverse Drug Reaction (ADR) is a negative/unpleasant outcome/symptom that is associated with a medication,
-----------------------------	--

	such as impairment or decline in an individual's mental or physical condition or functional or psychosocial status.
CA-GetCare	A web-based application that provides specific functionalities for contracted agencies to perform consumer intake/assessment/enrollment, record service units, run reports, etc.
Case Management and Medication Management Module	An on-line case management module, which includes comprehensive assessment, service plan, progress notes and a medication management tool. It is part of the CA-GetCare web-based application.
DAAS	San Francisco Department of Adult and Aging Services
Evidence Based Medication Management Program (MMP)	The use of evidence-based protocols and processes to screen for risks and consulting with pharmacists appropriately. Evidence-based prevention programs are interventions that are based on evidence that is generated by scientific studies published in peer-reviewed journals. One source of such evidence includes the U.S. Department of Health and Human Services (HHS) sponsored research. As a result of several studies, there is now evidence documenting the effectiveness of risk factor interventions related to medication management.
Frail	A functionally impaired older individual who is either: (a) unable to perform at least two Activities of Daily Living (ADL) or Independent Activities of Daily Living (IADL) without substantial human assistance, including verbal reminding, physical cueing or supervision; (b) having a cognitive or other mental impairment that requires substantial supervision because the older individual behaves in a manner that poses a serious health or safety hazard to the individual or to others.
Grantee	To be identified
HSA	Human Services Agency of the City and County of San Francisco
Low-Income	100% of poverty level. This is only to be used by consumers to self-identify their income status, not to be used as a means test to qualify for the program.
Minority	African-American, Hispanic, American Indian/Alaskan Native, Asian American, Pacific Islander

OCM	Office of Contract Management, San Francisco Human Services Agency.
OOA	Office on the Aging
QM Director/DAAS	Quality Management Director, Department of Aging and Adult Services
RTZ Associates	Vendor of CA-Getcare Case Management and Medication Management Module
Senior	Person who is 60 years or older

### **III. Target Population**

DAAS services must target consumers who are members of one or more of the following target groups that have been identified as demonstrating the greatest economic and social need, in particular:

- Low-income
- Non or limited English speaking
- Minority
- Frail
- Lesbian/Gay/Bisexual/Transgender

The intended recipients of the services provided by the Citywide Case Management Clinical Supervisor/ Consultant are OOA funded community case managers working with seniors and adults with disabilities.

### **IV. Eligibility for Citywide Clinical Supervision/ Consultation Services**

Agencies that are core members of the Citywide Clinical Supervision/ Consultation Collaborative are eligible to receive regular clinical supervision for their case managers funded by OOA.

Other OOA funded agencies for case management will have access to the Consultation Service, but not the regular clinical supervision.

### **V. Location and Time of Services**

Group and Individual supervision, and clinical oversight and consultation, are delivered at each specific agency. The Citywide Clinical Supervisor/ Consultant is available to meet in large group format and on an individual basis with case management staff. The specifics of either supervision model are worked out with each specific agency. This flexibility allows for the service model to respond to the culture of each organization. OOA funded agencies that are not part of the



Collaborative, would also have access to consultation by the Citywide Clinical Supervisor/ Consultant.

## VI. Description of Services

- A. The Grantee shall provide individual and group clinical/ supervision, clinical oversight, chart and documentation review (via the online case management module) and an opportunity for professional networking/resource sharing.

The Citywide Case Management Clinical Supervision/ Consultation Service includes at a minimum the following:

- **Monthly group supervision meetings** for the Clinical Collaborative. Group meetings provide case consultation, topic specific training, and review of core tasks and standards of case management. With a clinical orientation, group supervision and training aims to improve the case managers' general performance as well as their ability to work with clients, e.g. recognizing the mental health and counseling needs of clients and the personal boundary/counter-transference issues that can arise for care managers. For group supervision, the Clinical Supervisor may also bring in outside experts and trainers to expand knowledge of resources, geriatric-related topics, behavior health related issues, clinical skills and case management strategies with a focus on assessment, developing service plans, client relationship building, and managing challenging client issues. The Clinical Supervisor/ Consultant will encourage or enable participants' sharing of community resources, cross-agency referrals, peer review and guidance.
- **Weekly individual clinical supervision** to members of the Collaborative. Individual supervision sessions emphasize specific case manager performance issues; challenging client issues and offers guidance for maintaining quality case management. In addition, individual supervision provides a forum to address and improve charting and documentation issues.
- **Monthly meetings with OOA case management supervisors and Directors** - On a monthly basis the Citywide Clinical Supervisor/Consultant will meet with the agency supervisors/ directors to ensure coordination between the Citywide Clinical Supervisor/ Consultant and the day to day case management supervisors, to improve program effectiveness and avoid any problems of "dual supervision."
- **Quarterly review of the service plan developed by the case manager for thoroughness, relevance and client engagements** - As some of the case management supervisors also have their own cases, the Citywide Clinical Supervisor/ Consultant, after review of service plan with case management supervisors will sign their service plans if this is agreed upon by all parties concerned, i.e. the Agency that employs the Citywide Clinical Supervisor, and the Agency that employs the Case Management Supervisor.
- **Routine review of service plan developed by the case manager for thoroughness, relevance and client engagement upon admission or enrollment to the program.** - For cases that the Citywide Supervisor supervises, he/she may sign the service plans, as agreed upon by all parties concerned, i.e. the Agency that employs the Citywide Clinical Supervisor, and the Agency that employs the Case Management Supervisor.
- **Quarterly assessment of each case manager-** The Citywide Clinical Supervisor/Consultant will provide a quarterly assessment of each case manager that he/she supervises in terms of

the effectiveness of the service provided to clients after utilizing the skills they have learned from the Citywide Clinical Supervisor and training from the Case Management Training Institute sponsored by DAAS. An assessment tool will be developed by the Citywide Clinical Supervisor/Consultant, approved by the OOA staff and DAAS Quality Management Director and utilized for assessing the case managers' service. The results will be made available to the administrative supervisor and directors of each agency.

- The Citywide Clinical Supervisor will also be a member of the OOA Case Management Advisory Group, as well as the DAAS Case Management Training Advisory Group. He/she will work closely with the OOA staff, DAAS QM Director, and the Case Management and Medication Management Module Project Manager, and advise on improvement of the online system, MMP protocol and continuous improvement of the case management standards.

**B. The goals and service model of the Clinical Collaborative:**

**Service Model of the Clinical Collaborative:**

The Collaborative primarily achieves its objectives through the services provided by the Citywide Clinical Supervisor/ Consultant, a clinician experienced and trained in case management who is familiar with geriatric services and services to the adults with disabilities and systems. The Citywide Clinical Supervisor/ Consultant also acts as the facilitator and coordinator of the Collaborative as well as the clinical supervisor of the case managers. The agencies maintain primary supervisory responsibilities such as hiring and performance evaluations of the case managers, while the Citywide Clinical Supervisor/ Consultant provides the clinical oversight and consultation.

**Goals of the Clinical Collaborative**

- Improve case management knowledge, skills and abilities
- Emphasize core elements of case management - Intake, Assessment, Developing Service Plan, and Monitoring – and formation of therapeutic client relationships.
- Provide a support network for case managers to enhance professional growth and deter burnout
- Improve the quality of client/case management relationships
- Maintain quality of case management services
- Build collaborative networks among case management providers
- Extend case management knowledge and skills into clinical areas of relevance.

**VII. Contractor Responsibilities/Units of Service and Definitions**

During the term of the grant, the Grantee will provide services to the indicated number of consumers with the indicated number of units of service.

**Number of OOA funded Case Managers** committed to participate in the Collaboratives: 25 to 30

**Group Supervision**

Each Citywide Clinical Supervisor/ Consultant will provide at minimum Group Supervision meetings two times per month (24 meetings per year) for the Collaborative members.

**Individual Supervision**

Each member of the Collaborative will have access to individual and small-group clinical and supervision at least once per week or as needed. Units of service provided per year will range from a minimum of 400 to a maximum of 550 based on a model of both individual and small-group supervisions over 50 weeks.

**Meetings with participating agency supervisors and directors**

The Clinical Supervisor will meet on a monthly basis with all agency directors who are part of the Collaborative. (minimum 12 per year)

**Quarterly assessment of each case manager supervised**

Using an assessment tool approved by OOA staff and DAAS Quality Management Director, the Citywide Clinical Supervisor/Consultant will assess each case manager in terms of effectiveness in providing services to the clients.

**VIII. Service Objectives**

- The Clinical Supervisors will provide clinical supervision to a total of 25 to 30 case managers funded by OOA.\*
- The Clinical Supervisors will provide a total of 44 group supervision meetings per year.
- The Clinical Supervisor will provide a total of 480\_\_individual supervision sessions to the case managers annually.\*
- The Clinical Supervisor will provide a total of 12 meetings with the agency supervisors or directors.

The Clinical Supervisors will provide a 6 months' assessment of each case manager supervised, plus an initial baseline assessment: a total of 75 to 90 assessments in the first year, and 50 to 60 assessments in the subsequent years.

Grantee will submit a detailed project plan with service objectives and outcome objectives within one month following the grant allocation.

**IX. Outcome Objectives**

- At least 85% of case managers in the Collaborative responding to a satisfaction survey will rate the service as good or excellent and find the service beneficial to them. (Minimum percentage of returns = 85%)
- At least 85% of case management supervisors and directors in the Collaborative responding to a satisfaction survey will rate the service as good or excellent and find the service helpful in the service delivery to clients at their agency. (Minimum percentage of returns = 100%)

- At least 85% of non-collaborative case managers that seek consultation with the Citywide Clinical Supervisor/ Consultant, will rate the service as good or excellent, and find the service helpful to them. (Minimum percentage of returns = 75%)
- At least 85 % of the case managers supervised by the Citywide Clinical Supervisor will have increased effectiveness in their provision of services to the clients, as measured by a bi-annual assessment tool designed by the Citywide Clinical Supervisor. A baseline assessment will be conducted in the beginning of the fiscal year.

## **X. Monitoring Activities**

- A. Program Monitoring: Program monitoring will include review of compliance to specific program standards or requirements as stated in the OOA Policy Memorandum #39, Case Management Standards; client eligibility and targeted mandates, back up documentation for the units of service and all reporting, and progress of service and outcome objectives; how participant records are collected and maintained; reporting performance including monthly service unit reports on CA Getcare, maintenance of service unit logs; agency and organization standards, which include current organizational chart, evidence of provision of training to staff regarding the Elder Abuse Reporting; program operation, which includes a review of a written policies and procedures manual of all OOA funded programs, written project income policies if applicable, grievance procedure posted in the center/office, and also given to the consumers who are homebound, hours of operation are current according to the site chart; a board of director list and whether services are provided appropriately according to Sections VI and VII.
- 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, the current board roster and selected board minutes for compliance with the Sunshine Ordinance, and HIPAA compliance.

## **XI. Reporting and Other Requirements**

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

- A. The grantee will enter into the CA Getcare Service Unit section all the units of service by the 5th working day of the month for the preceding month:

Number of case managers that received clinical supervision.

Number of group supervision meetings held

Number of individual supervision sessions to the case managers

Number of meetings with the agency supervisors or directors

Number of quarterly assessments of case managers' effectiveness completed

- B. Monthly reports must be entered into the Contracts Administration, Reporting, and Billing Online (CARBON) system regarding the following:

Number of case managers that received clinical supervision.

Number of group supervision meetings held

Number of individual supervision sessions to the case managers

Number of meetings with the agency supervisors or directors

Number of quarterly assessments of case managers' effectiveness completed

- C. Grantee will provide an annual report summarizing the contract activities, referencing the tasks as described in Section VIII & IX- Service and Outcome Objectives. This report will also include accomplishments and challenges encountered by the Grantee. Grantee will enter the annual metrics in the CARBON database by the 15th of the month following the end of the program year on an annual basis:

- The percentage of case managers in the Collaborative responding to a satisfaction survey will rate the service as good or excellent and find the service beneficial to them.
- The percentage of case management supervisors and directors in the Collaborative responding to a satisfaction survey will rate the service as good or excellent and find the service helpful in the service delivery to clients at their agency.
- The percentage of non-collaborative case managers that seek consultation with the Citywide Clinical Supervisor/ Consultant, will rate the service as good or excellent, and find the service helpful to them.
- The percentage of the case managers supervised by the Citywide Clinical Supervisor will have increased effectiveness in their provision of services to the clients, as measured by a quarterly assessment tool designed by the Citywide Clinical Supervisor

- D. Grantee shall submit Community Services Block Grant (CSBG) time study to HSA/DAAS for the months of February, May, August and November. . The time study is due on the 10<sup>th</sup> day following the time study month and shall be entered on line to this website link: <https://calmaa.hfa3.org/signin>

- E. Grantee shall issue a Fiscal Closeout Report at the end of the fiscal year. The report is due to HSA no later than July 31 each grant year. This report must be submitted to the CARBON system.

- F. Grantee will provide an annual consumer satisfaction survey report to OOA by March 15 each grant year.

- G. Grantee shall develop and deliver ad hoc reports as requested by HSA.

- H. Grantee is required to attend all mandatory case management training or other training or meetings as needed.
- I. Apart from reports requested to be sent via e-mail to the Program Analyst and/or Contract Manager, all other reports should be sent to the following addresses:

Denise Cheung, Program Manager  
DAAS, Office on the Aging  
PO Box 7988  
San Francisco, CA 94120

Email address: [denise.cheung@sfgov.org](mailto:denise.cheung@sfgov.org),

Tahir Shaikh, Contracts Manager  
Human Services Agency  
PO Box 7988  
San Francisco, CA 94120

Email address: [Tahir.shaikh@sfgov.org](mailto:Tahir.shaikh@sfgov.org)

**HUMAN SERVICES AGENCY CONTRACT BUDGET SUMMARY  
 BY PROGRAM**

Contractor's Name Institute on Aging	Contract Term 7/1/14-6/30/17
---	---------------------------------

(Check One) New  Renewal \_\_\_\_\_ Modification \_\_\_\_\_  
 If modification No. of Mod. \_\_\_\_\_

Program: **Citywide Case Management Clinical Supervision Collaborative**

Budget Reference Page No.(s)				Total
Program Term	7/1/14-6/30/15	7/1/15-6/30/16	7/1/16-6/30/17	7/1/14-6/30/17
<b>Expenditures</b>				
Salaries & Benefits	\$157,560	\$157,560	\$157,560	\$472,680
Operating Expense	\$16,353	\$16,353	\$16,353	\$49,059
<b>Subtotal</b>	\$173,913	\$173,913	\$173,913	\$521,739
Indirect Percentage (%)	15%	15%	15%	15%
Indirect Cost (Line 16 X Line 17)	\$26,087	\$26,087	\$26,087	\$78,261
Capital Expenditure	\$0	\$0	\$0	
Total Expenditures	\$200,000	\$200,000	\$200,000	\$600,000
<b>HSA Revenues</b>				
General Fund	\$200,000	\$200,000	\$200,000	\$600,000
<b>TOTAL HSA REVENUES</b>	\$200,000	\$200,000	\$200,000	\$600,000
<b>Other Revenues</b>				
Project Income				
In-Kind				
Fund-Raising				
Contributions/Grants				
IOA Subsidy				
Total Revenues	\$200,000	\$200,000	\$200,000	\$600,000
Full Time Equivalent (FTE)				1.80

Prepared by: Dustin Harper Telephone No.: 415-750-8750 Date 6/4/2014

HSA-CO Review Signature: \_\_\_\_\_

## Appendix C – Method of Payment

- I. In accordance with Section 5 of the Grant Agreement, payments shall be made for actual costs incurred and reported for each month. Under no circumstances shall payment exceed the amount set forth in Section 5 Compensation of the Agreement.
- II. Grantee will submit all bills, invoices and related documentation in the format specified by SFHSA within 15 days after the month of service to SFHSA's web-based Contracts Administration, Reporting, and Billing Online (CARBON) System at: <https://contracts.sfhsa.org>  
  
Grantee may submit bills, invoices and related documentation in the format specified by SFHSA via paper or email only upon special permission by their assigned Contract Manager.
- III. Grantee must sign up to receive payments electronically via Automated Clearing House (ACH). Remittance information will be provided through Paymode-X. Additional information and sign up is available at: <http://www.sfgov.org/ach>
- IV. The Executive Director or CFO must submit a letter of authorization designating specific users who will have access to CARBON to electronically submit and sign for invoices, budget revision requests, program reports, and view other information that is in CARBON.
  - A. Submittal of the invoice by designated authorized personnel with proper login credentials constitutes an electronic signature and certification of the invoice.
  - B. Authorized personnel with CARBON login credentials shall not share or internally reassign logins.
  - C. Grantee shall notify SFHSA Contract Manager immediately regarding any need for the restriction or termination of a previously authorized CARBON login.
- V. Invoices shall include actual expenditures incurred during the month, unless otherwise specified.
  - A. The invoice supplied shall include the total dollar amount claimed for the month.
  - B. There shall be no variance from the line item budget submitted which adversely affects program performance as contained in the Grantee's proposal and specified in the grant.
  - C. The invoice shall show by line item:
    1. Budgeted amount (per approved grant budget or modification)
    2. Expenses for invoice period
    3. Expenses year-to-date
    4. % of budget expended
    5. Remaining balance
    6. Adjustments, including advance payment recovery
    7. Program income when specified in the grant agreement.
  - D. Personnel expenditures will show same line item categories by position detail. Detail will show name of employee, position name, %FTE and budgeted salary.
  - E. With written approval from SFHSA Program/Contract Manager, Grantee may adjust items within the existing budget of the grant in accordance with SFHSA Office of Contract Management Policy for Budget Line Item Revisions.
  - F. Supporting Documentation, except as discussed below need not be submitted with the invoice. However, Grantee must keep and make available as requested such supporting documentation for all expenditures for which reimbursement is requested for all costs so claimed. All charges incurred shall be due and payable only after services have been rendered, except as stated otherwise. Supporting documentation must be uploaded into CARBON and submitted along with the invoice.



- Documentation should be submitted with the invoice for all payroll expenses paid to budgeted personnel for the period covered by the invoice. Payroll information can be from a payroll service or a payroll ledger from the Grantee's accounting system
- For any and all non-recurring expenditures (e.g. equipment purchases/capital upgrades and building repair and upgrades) and/or items that exceed \$5,000, Grantee shall supply back-up documentation in the form of a paid invoice(s).
- Indirect costs shall not be applied to non-reoccurring expenses.
- All subcontracted services must be documented by submission of the subcontractor's paid invoice, regardless of dollar amount.
- If this grant agreement contains any Pass-Through funding requiring specific expense documentation from the source agency, Federal, State, Private or other then the following documentation shall also be included with each invoice submission:

Funding Agency: \_\_\_\_\_ CFDA or other Identification #: \_\_\_\_\_

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

- VI. Following SFHSA verification of submitted Invoice with required documentation of incurred expenses via CARBON, SFHSA will authorize payment within 10 business days after receipt of the invoice.
- VII. Within 45 days after the end of the grant period, Grantee shall submit a final report reflecting actual expenditures, which will be supported by the Grantee's accounting records. If a refund is due SFHSA, it will be submitted with the final report.
- VIII. Advances or prepayments are allowable in order to meet the Grantee cash flow needs in certain unique circumstances. The Agency, at its sole discretion, shall make available to the Grantee upon written request an advance amount not to exceed two (2) months or 1/6<sup>th</sup> of the total annualized grant award, or as mutually agreed upon. The advanced sum shall be deducted from the Grantee's monthly invoices at an equal rate each month that will enable repayment by the tenth month of the fiscal year. For a twelve-month grant the rate of repayment of the advance will be 1/10<sup>th</sup> per month from July to April. Requests for advance payment will be granted on a case-by-case basis and are not intended to be a regular "automatic" procedure. Approval will be a consensus of Program and Contract Staff.

Once the grant is certified, the Grantee, prior to distribution of any advanced payment, must fulfill the following conditions:

- 1. All contractual compliance requirements must be current, i.e., reports submitted and approved, corrective actions resolved, business tax and insurance certificates in place, prompt and fully documented billings.

2. The Grantee shall submit a written request with a narrative justification that fully describes the unique circumstances to the Program Manager and Contract Manager for review and approval.
  3. Final invoice from the preceding fiscal year must be received prior to advance distribution.
- IX. Timely Submission of Reports – If reports/documents are required, Grantee shall submit these reports prior to submitting invoices. Failure to submit required reports/documents in CARBON by specified deadlines may result in withholding of grant payments.

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

**GRANT AGREEMENT**

between

CITY AND COUNTY OF SAN FRANCISCO

and

**INSTITUTE ON AGING**

**THIS GRANT AGREEMENT** (this “Agreement”) is made this **1<sup>st</sup>** day of **July**, 2014, in the City and County of San Francisco, State of California, by and between **Institute on Aging, 3575 Geary Blvd, San Francisco, CA 94118** (“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) seeking a grant, for the purpose of funding the matters set forth in the Grant Plan (as hereinafter defined); and summarized briefly as follows:

**To provide Citywide Case Management Clinical Supervision/Consultation Service;** and

**WHEREAS**, the Grant is funded with Federal dollars, CFDA #93.041; and

**WHEREAS**, approval for said Agreement was obtained when the Civil Service Commission approved Grant Number **4080-10/11** on **March 7, 2011**; and

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

**NOW, THEREFORE**, in consideration of the promises 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.

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

(n) “**HRC**” shall mean the Human Rights Commission of 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.

**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 “subgrantee,” “successor” or “assign” herein refers only to a subgrantee (“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 21.10-1 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, 2014** 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, 2015**.

### **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 subgrantees 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 **Six Hundred Thousand** Dollars (**\$600,000**) for the period **from July 1, 2014 to June 30, 2017, plus any contingent amount authorized by City and certified as available by the Controller.**

**Contingent amount:** Up to **Sixty Thousand** Dollars (**\$60,000**) for the period from **July 1, 2014 to June 30, 2017 (Y1), may be available, in the City's sole discretion, as a contingency subject to authorization by the City and certified as available by the Controller.**

The maximum amount of Grant Funds disbursed hereunder shall not exceed **Six Hundred Sixty Thousand** Dollars (**\$660,000**) for the period from **July 1, 2014 to June 30, 2017 (Y1).**

Grantee understands that, of the maximum dollar disbursement listed in Section 5.1 of this Agreement, **the amount shown as the Contingent Amount may not to be used in Program Budgets attached to this Agreement as Appendix B, and is not available to Grantee without a revision to the Program Budgets of Appendix B specifically approved by Grant Agreement Administrator.** Grantee further understands that no payment of any portion of this contingency amount will be made unless and until such funds are certified as available by Controller. Grantee agrees to fully comply with these laws, regulations, and policies/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 OMB Circular A-122, 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 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 Disallowance and Single Audit Requirements:** If Grantee claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States 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. 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. **Single Audit Requirements:** Grantees that expend \$500,000 or more in a year from any and all Federal awards shall have a single audit



conducted in accordance with OMB Circular A-133. Grantees that expend less than \$500,000 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.

## **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 OMB Circular A-133, 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, 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.** Pursuant to San Francisco Administrative Code §21.35, any grantee, subgrantee or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. A grantee, subgrantee or consultant will be deemed to have submitted a false claim to the City if the grantee, subgrantee 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.** Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

(a) Grantee shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty (30) days following the date on which this Agreement becomes effective (unless Grantee has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Grantee; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

(b) Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Grantee of the terms of this Agreement. If, within thirty (30) days after Grantee receives written notice of such a breach, Grantee fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Grantee fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

(c) Any Subgrant entered into by Grantee shall require the subgrantee to comply, as to the subgrantee's Eligible Employees, with each of the terms of this section.

(d) Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

## **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 Subgrants.** 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 and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Grantee or loss of or damage to property, arising directly or indirectly from Grantee's performance of this Agreement, including, but not limited to, Grantee's use of facilities or equipment provided by City or others,

regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Grantee, its subcontractors or either's agent or employee. 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. In addition to Grantee's obligation to indemnify City, Grantee specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Grantee by City and continues at all times thereafter. Grantee shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement. Grantee shall also indemnify, defend, and hold City harmless from all suits or claims or administrative proceedings for breaches of federal and/or state law regarding the privacy of personally identifying information, personal health information, electronic records, or related topics, arising directly or indirectly from Grantee's performance of this Agreement, except where such breach is the result of the active negligence or willful misconduct of 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.
- (c) Commercial Automobile Liability Insurance with limits not less than one million dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- (d) Professional liability insurance for negligent acts, errors or omission with respect to professional or technical services, if any, required in the performance of this Agreement with limits not less than one million dollars (\$1,000,000) each claim.

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

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

(e) **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.

(f) **Cross Default.** Grantee defaults under any other agreement between Grantee and City (after expiration of any grace period expressly stated in such agreement).

(g) **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.

(h) **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.

## 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 this Chapter 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 subcontractors, and all agents and employees of Contractor and any subcontractor 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 subcontractors 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.

## **ARTICLE 13 ASSIGNMENTS AND SUBGRANTING**

**13.1 No Assignment by Grantee.** Grantee shall not, either directly or indirectly, assign, transfer, hypothecate, subgrant 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 Subgranting.** If Appendix E lists any permitted subgrantees, then notwithstanding any other provision of this Agreement to the contrary, Grantee shall have the right to subgrant 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 subgrant or delegate the whole of the Grant Plan. Grantee may subgrant 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 subgrantee 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 subgranted 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 subgrantee 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 Subgrant.** Each subgrant 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 subgrant shall incorporate all of the terms of this Agreement, insofar as they apply to the subgranted portion of the Grant Plan. Without limiting the scope of the foregoing, each subgrant shall provide City, with respect to the s 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 subgrant 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 GRANTEE 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 Grant Management  
P.O. Box7988  
San Francisco, CA 94120-7988  
Facsimile No. 415-557-5679

If to Grantee: Institute on Aging  
3330 Geary Blvd, 2<sup>nd</sup> Floor  
San Francisco, CA 94118  
Attn: J.Thomas Briody  
Facsimile No. (415) 750-4179  
Email: tbriody@ioaging.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 Left Blank by Agreement of the Parties

### 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.** As a condition to this Agreement, Grantee shall execute the “Chapter 12B Declaration: Nondiscrimination in Grants and Benefits” form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

(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 require 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. Grantee 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 Grantee's obligations under the MCO is set forth in this Section. Grantee is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Grantee to pay Grantee'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 Grantee is obligated to keep informed of the then-current requirements. Any subgrant entered into by Grantee shall require the subgrantee 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 Grantee's obligation to ensure that any subgrantees of any tier under this Agreement comply with the requirements of the MCO. If any subgrantee under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Grantee.

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

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

f. Grantee'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 Grantee fails to comply with these requirements. Grantee agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Grantee's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Grantee 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, Grantee fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Grantee fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, 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. Grantee represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

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

### **16.9. Requiring Health Benefits for Covered Employees**

Grantee agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Grantee shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Grantee chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Grantee is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Grantee's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Grantee if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Grantee fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Grantee fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each



of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subgrant entered into by Grantee shall require the Subgrantee to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Grantee shall notify City's Office of Grant Administration when it enters into such a Subgrant and shall certify to the Office of Grant Administration that it has notified the Subgrantee of the obligations under the HCAO and has imposed the requirements of the HCAO on Subgrantee through the Subgrant. Each Grantee shall be responsible for its Subgrantees' compliance with this Chapter. If a Subgrantee fails to comply, the City may pursue the remedies set forth in this Section against Grantee based on the Subgrantee's failure to comply, provided that City has first provided Grantee with notice and an opportunity to obtain a cure of the violation.

e. Grantee shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Grantee's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

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

g. Grantee shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Grant.

h. Grantee shall keep itself informed of the current requirements of the HCAO.

i. Grantee shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subgrantees and Subtenants, as applicable.

j. Grantee shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Grantee shall allow City to inspect Grantee's job sites and have access to Grantee's employees in order to monitor and determine compliance with HCAO.

l. City may conduct random audits of Grantee to ascertain its compliance with HCAO. Grantee agrees to cooperate with City when it conducts such audits.

m. If Grantee is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Grantee later enters into an agreement or agreements that cause Grantee's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Grantee and the City to be equal to or greater than \$75,000 in the fiscal year.

**16.10 Limitations on Contributions.** Through execution of this Agreement, Grantee acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who 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. Grantee 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. Grantee further acknowledges that the prohibition on contributions applies to each prospective party to the grant; each member of Grantee's board of directors; Grantee's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Grantee; any subgrantee listed in the bid or grant; and any committee that is sponsored or controlled by Grantee. Additionally, Grantee acknowledges that Grantee must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

#### **16.11 First Source Hiring Program.**

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

**b. First Source Hiring Agreement.** As an essential term of, and consideration for, any grant or property grant with the City, not exempted by the FSHA, the Grantee shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the grant or property grant. Grantees shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

(1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

(2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

(3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating

employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term 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 this Chapter. 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 this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

(6) Set the term of the requirements.

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

(8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

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

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

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

**e. Liquidated Damages.** Grantee agrees:

(1) To be liable to the City for liquidated damages as provided in this section;

(2) To be subject to the procedures governing enforcement of breaches of grants based on violations of grant provisions required by this Chapter as set forth in this section;

(3) That the grantee's commitment to comply with this Chapter is a material element of the City's consideration for this grant; that the failure of the grantee to comply with the grant provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the grantee from the first source hiring process, as determined by the FSHA during its first investigation of a grantee, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the grantee's failure to comply with its first source referral contractual obligations.

(4) That the continued failure by a grantee 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 grantee'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 grantee to comply with its first source referral contractual obligations.

(6) That the failure of grantees to comply with this Chapter, except property grantees, 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. Subgrants.** Any subgrant entered into by Grantee shall require the subgrantee to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

**16.12 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.

**16.13 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.

**16.14 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.

## **16.15 Reserved.**

**16.16 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.

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

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

**16.18 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.

**16.19 Slavery Era Disclosure. Left Blank by Agreement of the Parties**

**16.20 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.

**16.21. 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.

**16.22 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, HIPAA 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 Subgrantees

**None**

**Appendix F**  
**Additional Terms**  
**Healthcare Insurance Portability and Accountability Act of 1996 ("HIPAA")**

**1. HIPAA**

The parties acknowledge that CITY is a Covered Entity as defined in the Healthcare Insurance Portability and Accountability Act of 1996 ("HIPAA") and is therefore required to abide by the Privacy Rule contained therein. The parties further agree that CONTRACTOR falls within the following definition under the HIPAA regulations:

- A Covered Entity subject to HIPAA and the Privacy Rule contained therein; or
- A Business Associate subject to the terms set forth in Appendix E;
- Not Applicable, CONTRACTOR will not have access to Protected Health Information.

**2. HUMAN SERVICES AGENCY PRIVACY AND DATA SECURITY POLICIES**

- A. The Human Services Agency (HSA) has developed Privacy and Data Security Policies that encompass all federal and state confidentiality and data security regulations, including HIPAA and local policies.

CONTRACTORS agree to abide by the HSA Privacy and Data Security Policies, unless otherwise granted a waiver from certain policies by HSA, and will be monitored and evaluated on the following criteria:

- B. HSA Privacy Policy is integrated in the program's governing policies and procedures regarding patient privacy and confidentiality.

As Measured by: Evidence that the policy and procedures that abides by the rules outlined in the HSA Privacy Policy have been adopted, approved and implemented.

- C. All staff that handles patient health information are trained (including new hires) and annually updated in the program's privacy/confidentiality policies and procedures.

As Measured by: Documentation exists showing individuals were trained.

- D. A Privacy Notice that meets the requirements of the Federal Privacy Rule (HIPAA) is written and provided to all patients/clients served in their threshold and other languages. If document is not available in the patient's/client's relevant language, verbal translation is provided.

As Measured by: Evidence in patient's/client's chart or electronic file that patient was "noticed." (Examples in English, Cantonese, Vietnamese, Tagalog, Spanish, Russian will be provided.)

- E. A Summary of the above Privacy Notice is posted and visible in registration and common areas of treatment facility.

As Measured by: Presence and visibility of posting in said areas. (Examples in English, Cantonese, Vietnamese, Tagalog, Spanish, Russian will be provided.)

- F. Each disclosure of a patient's/client's health information for purposes other than treatment, payment, or operations is documented.

As Measured by: Documentation exists

- G. Authorization for disclosure of a patient's/client's health information is obtained prior to release (1) to providers outside the HSA Safety Net or (2) from a substance abuse program.

As Measured by: An authorization form that meets the requirements of the Federal Privacy Rule (HIPAA) is signed and in patient's/client's chart/file

### **3. THIRD PARTY BENEFICIARIES**

No third parties are intended by the parties hereto to be third party beneficiaries under this Agreement, and no action to enforce the terms of this Agreement may be brought against either party by any person who is not a party hereto.

### **4. CERTIFICATION REGARDING LOBBYING**

CONTRACTOR certifies to the best of its knowledge and belief that:

- A. No federally appropriated funds have been paid or will be paid, by or on behalf of CONTRACTOR to any persons for influencing or attempting to influence an officer or an employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the entering into of any federal cooperative agreement, or the extension, continuation, renewal, amendment, or modification of a federal contract, grant, loan or cooperative agreement.
- B. If any funds other than federally appropriated funds have been paid or will be paid to any persons for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, CONTRACTOR shall complete and submit Standard Form -111, "Disclosure Form to Report Lobbying," in accordance with the form's instructions.
- C. CONTRACTOR shall require the language of this certification be included in the award documents for all subawards at all tiers, (including subcontracts, subgrants, and contracts under grants, loans and cooperation agreements) and that all subrecipients shall certify and disclose accordingly.
- D. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## **5. MATERIALS REVIEW**

CONTRACTOR agrees that all materials, including without limitation print, audio, video, and electronic materials, developed, produced, or distributed by personnel or with funding under this Agreement shall be subject to review and approval by the Contract Administrator prior to such production, development or distribution. CONTRACTOR agrees to provide such materials sufficiently in advance of any deadlines to allow for adequate review. CITY agrees to conduct the review in a manner which does not impose unreasonable delays.

## Appendix G

# BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum (“Addendum”) supplements and is made a part of the contract (“Contract”) by and between the City and County of San Francisco, Covered Entity (“CE”) and Contractor, Business Associate (“BA”).

### RECITALS

- A. CE wishes to disclose certain information to BA pursuant to the terms of the Contract, some of which may constitute Protected Health Information (“PHI”) (defined below).
- B. CE and BA intend to protect the privacy and provide for the security of PHI disclosed to BA pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws.
- C. As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require CE to enter into a contract containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(a) and (e) and 164.504(e) of the Code of Federal Regulations (“C.F.R.”) and contained in this Addendum.

In consideration of the mutual promises below and the exchange of information pursuant to this Addendum, the parties agree as follows:

#### 1. Definitions

- a. **Breach** shall have the meaning given to such term under the HITECH Act and HIPAA Regulations [42 U.S.C. Section 17921 and 45 C.F.R. Section 164.402].
- b. **Breach Notification Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and D.
- c. **Business Associate** shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including, but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.
- d. **Covered Entity** shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.
- e. **Data Aggregation** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- f. **Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- g. **Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.
- h. **Electronic Health Record** shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.



- i. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- j. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- k. **Protected Health Information or PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the part, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].
- l. **Protected Information** shall mean PHI provided by CE to BA or created, maintained, received or transmitted by BA on CE's behalf.
- m. **Security Incident** shall have the meaning given to such term under the Security Rule, including, but not limited to, 45 C.F.R. Section 164.304.
- n. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- o. **Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h) and 45 C.F.R. Section 164.402.

## 2. **Obligations of Business Associate**

- a. **Permitted Uses.** BA shall use Protected Information only for the purpose of performing BA's obligations under the Contract and as permitted or required under the Contract and Addendum, or as required by law. Further, BA shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by CE. However, BA may use Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE [45 C.F.R. Sections 164.504(e)(2) and 164.504(e)(4)(i)].
- b. **Permitted Disclosures.** BA shall disclose Protected Information only for the purpose of performing BA's obligations under the Contract and as permitted or required under the Contract and Addendum, or as required by law. BA shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by CE. However, BA may disclose Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (ii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE. If BA discloses Protected Information to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Addendum and used or disclosed only as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BA of any breaches, suspected

breaches, security incidents, or unauthorized uses or disclosures of the Protected Information in accordance with paragraph 2. m. of the Addendum, to the extent it has obtained knowledge of such occurrences [42 U.S.C. Section 17932; 45 C.F.R. Section 164.504(e)].

- c. **Prohibited Uses and Disclosures.** BA shall not use or disclose PHI other than as permitted or required by the Contract and Addendum, or as required by law. BA shall not use or disclose Protected Information for fundraising or marketing purposes. BA shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates [42 U.S.C. Section 17935(a) and 45 C.F.R. Section 164.522(a)(vi)]. BA shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of CE and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2), and the HIPAA regulations, 45 C.F.R. Section 164.502(a)(5)(ii); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to the Contract.
- d. **Appropriate Safeguards.** BA shall implement appropriate safeguards to prevent the use or disclosure of Protected Information other than as permitted by the Contract or Addendum, including, but not limited to, administrative, physical and technical safeguards in accordance with the Security Rule, including, but not limited to, 45 C.F.R. Sections 164.308, 164.310, and 164.312. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. BA shall comply with the policies and procedures and documentation requirements of the Security Rule, including, but not limited to, 45 C.F.R. Section 164.316. [42 U.S.C. Section 17931]
- e. **Business Associate's Subcontractors and Agents.** BA shall ensure that any agents and subcontractors that create, receive, maintain or transmit Protected Information on behalf of BA, agree in writing to the same restrictions and conditions that apply to BA with respect to such Protected Information and implement the safeguards required by paragraph 2.d. above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. BA shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. Sections 164.530(f) and 164.530(e)(1)).
- f. **Accounting of Disclosures.** Within ten (10) calendar days of a request by CE for an accounting of disclosures of Protected Information or upon any disclosure of Protected Information for which CE is required to account to an individual, BA and its agents and subcontractors shall make available to CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935 (c), as determined by CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents and subcontractors for at least six(6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an Electronic Health Record. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. If a patient submits a request for an accounting directly to BA or its agents or subcontractors, BA shall forward the request to CE in writing within five(5) calendar days.

- g. **Governmental Access to Records.** BA shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to CE and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining BA's compliance with HIPAA [45 C.F.R. Section 164.504(e)(2)(ii)(I)]. BA shall provide CE a copy of any Protected Information and other documents and records that BA provides to the Secretary concurrently with providing such Protected Information to the Secretary.
- h. **Minimum Necessary.** BA, its agents and subcontractors shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure. [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)] BA understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."
- i. **Data Ownership.** BA acknowledges that BA has no ownership rights with respect to the Protected Information.
- j. **Notification of Possible Breach.** BA shall notify CE within twenty-four (24) hours of any suspected or actual breach of Protected Information; any use or disclosure of Protected Information not permitted by the Contract or Addendum; any security incident (i.e., any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system) related to Protected Information, and any actual or suspected use or disclosure of data in violation of any applicable federal or state laws by BA or its agents or subcontractors. The notification shall include, to the extent possible, the identification of each individual who unsecured Protected Information has been, or is reasonably believed by the business associate to have been, accessed, acquired, used, or disclosed, as well as any other available information that CE is required to include in notification to the individual, the media, the Secretary, and any other entity under the Breach Notification Rule and any other applicable state or federal laws, including, but not limited, to 45 C.F.R. Section 164.404 through 45 C.F.R. Section 164.408, at the time of the notification required by this paragraph or promptly thereafter as information becomes available. BA shall take (i) prompt corrective action to cure any deficiencies and (ii) any action pertaining to unauthorized uses or disclosures required by applicable federal and state laws. (This provision should be negotiated.) [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)]
- k. **Breach Pattern or Practice by Business Associate's Subcontractors and Agents.** Pursuant to 42 U.S.C. Section 17934(b) and 45 C.F.R. Section 164.504(e)(1)(ii), if the BA knows of a pattern of activity or practice of a subcontractor or agent that constitutes a material breach or violation of the subcontractor or agent's obligations under the Contract or Addendum or other arrangement, the BA must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the BA must terminate the Contract or other arrangement if feasible. BA shall provide written notice to CE of any pattern of activity or practice of a subcontractor or agent that BA believes constitutes a material breach or violation of the subcontractor or agent's obligations under the Contract or Addendum or other arrangement within five (5) days of discovery and shall meet with CE to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

### 3. Termination

- a. **Material Breach.** A breach by BA of any provision of this Addendum, as determined by CE, shall constitute a material breach of the Contract and shall provide grounds for immediate termination of the

Contract, any provision in the Contract to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii)].

- b. Judicial or Administrative Proceedings.** CE may terminate the Contract, effective immediately, if (i) BA is named as defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.
- c. Effect of Termination.** Upon termination of the Contract for any reason, BA shall, at the option of CE, return or destroy all Protected Information that BA and its agents and subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by CE, BA shall continue to extend the protections and satisfy the obligations of Section 2 of this Addendum to such information, and limit further use and disclosure of such PHI to those purposes that make the return or destruction of the information infeasible [45 C.F.R. Section 164.504(e)(ii)(2)(J)]. If CE elects destruction of the PHI, BA shall certify in writing to CE that such PHI has been destroyed in accordance with the Secretary's guidance regarding proper destruction of PHI.
- d. Disclaimer**

CE makes no warranty or representation that compliance by BA with this Addendum, HIPAA, the HITECH Act, or the HIPAA Regulations will be adequate or satisfactory for BA's own purposes. BA is solely responsible for all decisions made by BA regarding the safeguarding of PHI.

#### **4. Amendment to Comply with Law.**

The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Contract or Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations and other applicable state or federal laws relating to the security or confidentiality of PHI. The parties understand and agree that CE must receive satisfactory written assurance from BA that BA will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable laws. CE may terminate the Contract upon thirty (30) days written notice in the event (i) BA does not promptly enter into negotiations to amend the Contract or Addendum when requested by CE pursuant to this section or (ii) BA does not enter into an amendment to the Contract or Addendum providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

#### **5. Reimbursement for Fines**

In the event that CE pays a fine to a state or federal regulatory agency based on an impermissible use or disclosure of PHI by BA or its subcontractors or agents, then BA shall reimburse CE in the amount of such fine within thirty (30) calendar days.

**Appendix A---Services to be Provided by Grantee**

**Effective July 1, 2014 to June 30, 2017**

**Linkages Program  
INSTITUTE ON AGING**

**I. Purpose**

The Linkages Program aims to help frail elderly adults and adults with disabilities, age 18 years and older, remain in their homes, maximize their independence, and reduce the need for more costly out-of-home care.

**II. Program Definitions**

Linkages Program                      The Linkages Program is a case management program which also administers a Purchase of Service (POS) program and a Respite Purchase of Service (RPOS) program.

Respite Purchase of Services (RPOS)                      The Linkages site is required to administer the Respite Purchase of Service (RPOS) Program. RPOS funds purchase respite services for primary, unpaid caregivers of consumers. An amount of \$9,449 is to be allocated from the Linkages fund for RPOS, which has to be under a separate line item in the total budget. It maintains a \$450 maximum allocation per family per year in order to ensure that the maximum number of families will be served.

Program Income                      Revenue generated by the Contractor or subcontractor from contract-supported activities. Program income is:

- a) Voluntary contributions received from a participant or responsible party as a result of services.
- b) Income from usage or rental fees of real or personal property acquired with grant funds or funds provided under this Agreement.
- c) Royalties received on patents and copyrights from contract-supported activities.
- d) Proceeds from sale of items fabricated under a contract agreement.

Program income is to be used to increase the service level or facilitate access to service.

Eligible Service Population                      For Linkages: The frail elderly and disabled adult age 18 and older without regard to financial eligibility; live in San Francisco; the ability to be maintained in the community with case management; be willing to participate in the program; and be at risk of being placed in an institution.

Purchase of Services	Purchase of Services (POS) for client services or equipment. A minimum of \$8,500 is allocated to the POS from the Linkages budget.
Arranged Services	Arranged services are those services that are referred, at no cost to the Program.

### **III Eligibility for Case Management Services in the Linkages Program**

In order to obtain Case Management services in the Linkages Program, an individual must meet the following criteria:

- 1) be 18 years of age or older;
- 2) not currently receiving case management services from the Department of Developmental Disabilities; Department of Mental Health; Department of Rehabilitation; or Multipurpose Senior Services Program (MSSP);
- 3) be at risk of institutionalization;
- 4) be a resident of San Francisco;
- 5) be able to be maintained in the community through the use of Linkages services;
- 6) have a need for case management and be willing to participate in the Program.

In order to be considered “at risk,” an individual must meet at least one of the following conditions:

- 1) impairment in one or more areas of Activities of Daily Living (ADL)—eating, dressing, transfer, bathing, toileting, and grooming; or
- 2) two or more Instrumental Activities of Daily Living (IADL’s)—taking medications, stair climbing, mobility indoor, mobility outdoor, housework, laundry, shopping and errands, meal preparation and cleanup, transportation, telephone and money management; or
- 3) be unable to manage his/her own affairs due to emotional and/or cognitive impairment; or
- 4) be impaired by virtue of a significant event or circumstance that has occurred within the past 12 months.

Specific conditions or situations such as substance abuse or chronic mental illness shall not be a deterrent to Linkages services if the eligibility criteria can be met. Prospective clients must be given the opportunity to demonstrate their capability to use case management.

The applicant's income level shall not be a criterion for eligibility in the Linkages Program, and applicants shall not be subject to providing financial verification. "Financial verification" is defined as a review of the applicant's financial records, requiring the applicant to produce checks or records of income/assets, contacting the applicant's income sources, or by any means beyond the applicant's statement.

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

The Linkages Program intends to prevent premature or inappropriate institutionalization of frail, at-risk elderly and functionally impaired adults, aged 18 and older, by providing case management as well as comprehensive information and assistance services. There is no income criteria for the program, although consumers who can afford to pay are requested to contribute a share of cost for Case Management services and/or purchased services. However, no eligible individuals will be turned away solely because of inability or unwillingness to pay.

The Case Management process of the Linkages Program includes at a minimum the following:

- The Intake/Screening process—Intake begins with an individual calling the Linkages provider to request assistance. The information completed by the case manager helps determine presumptive eligibility of the potential client and is used to collect demographic and other information.
- Enrollment---Enrollment of the client into the program includes explanation of the range of services available, and clients' release authorizing Linkages staff to release information from/to individuals or agencies relating to health, mental health, medical benefits, income assistance, social or other services.
- Comprehensive assessment---The Linkages case manager begins assisting the client by completing an in-depth assessment of each person's situation in the home. Based on that assessment, the client, the family, and the case manager decide what the client needs and make a plan to meet those needs.
- Care-Planning---This plan may include linking the individuals and their families to existing community services, such as transportation, meals, in-home care, housing assistance and adult day care programs. The plan may also focus on obtaining adaptive devices, such as ramps, bath benches, medi-sets, and grab bars. Assistance, such as home repairs, counseling, or telephone reassurance, may be arranged to help Linkages clients remain independent.
- Reassessment---A formal reassessment must be conducted at least annually.
- Monitoring and follow-up---Case managers must follow up on the plan with the client on at least a monthly basis. This follow-up is provided to make sure the client is satisfied with the assistance received and to identify new needs. The case manager should also visit each client at least every three months.
- Arranged Services---The case manager must coordinate services in the community for which the client is eligible, such as Medicare, Medi-Cal, In-Home Supportive Services (IHSS), Older Americans Act programs such as Home-Delivered Meals, and other publicly funded programs. The case manager should also coordinate with other referral agencies to provide services.
- Purchased Services---If other resources are unavailable to pay for services, Linkages has a minimal amount of funds to pay for needed services. A minimum of \$7,500 from the

total Linkages funding has to be allocated to the Purchase of Service (POS). There are two types of purchases: 1) Client services, such as choreworker, transportation, meals etc; 2) equipment, such as grab bars, emergency response systems, ramps etc.

- Respite Purchase of Services--- The Linkages site also has a mandate to administer the Respite Purchase of Service (RPOS) Program. RPOS funds are to purchase respite services for primary, unpaid caregivers of consumers. An amount of \$9,449 is to be allocated from the Linkages fund for RPOS, which has to be under a separate line item in the total budget. (There will be no Respite Purchase of Services attached to Linkages in the absence of funding).
- Client Termination---Caseload turnover is an integral component of case management. Clients are subject to termination under the following circumstances: case management services completed, client's condition improved or stabilized, and the client is no longer eligible for case management; client requires higher level of service, such as Multi-Purpose Senior Services Program (MSSP), a federal funded program; client requires long-term institutionalization; client's needs exceed Linkages capacity; client no longer desires services; client moved out of area; client died; and other reasons.
- The Grantee must be compliant with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy and security rules. For specific compliance requirements, please refer to Appendices G & H to the Grant Agreement.

#### V. Contractor Responsibilities/Units of Service and Definitions

During the term of the grant, the Grantee will provide service to the indicated number of consumers with the indicated number of units of service.

**Total number of unduplicated consumers to be served each year: 168**

##### **Comprehensive Assessment**

##### **# UNITS OF SERVICE**

To collect information about a consumer with multiple needs (social, environmental, physical or mental) and determine the necessary supportive or other appropriate services to meet those needs. Time used in conducting the home-visit (including travel) and completion of all paper work are to be included.

UNIT: One Hour

UNIT: 216

##### **Care Planning**

To develop an individualized plan of care and services under a Case management system based on a comprehensive assessment of the consumer's condition and/or resources. Time used in writing the care plan and related consultation will be included.

UNIT: One Hour

UNIT: 180

##### **Service Authorization or Arrangement**



To obtain services according to an individualized care plan by coordinating existing services, authorization for payment of services, or purchase of services. Time used in making phone calls in liaising with other service providers, and filling-out applications will be included.

UNIT: One Hour

UNIT: 1800

### **Case Monitoring**

To determine quality and effectiveness of services provided to a consumer according to an individualized care plan; to maintain periodic consumer contact to determine if change has occurred; and to take appropriate action as necessary. Time spent in calling the consumers/caregivers and in conducting home-visits will be included.

UNIT: One Hour

UNIT: 2304

## **VI. Service Objectives**

- Grantee will provide case management services to a total of 168 unduplicated consumers.
- Grantee will provide a total of 216 hours of comprehensive assessment to the consumers.
- Grantee will provide a total of 180 hours of care planning for the consumers.
- Grantee will provide a total of 1800 hours of care coordination and arrangement for the consumers.
- Grantee will provide a total of 2304 hours of case monitoring for the consumers

## **VII. Outcome Objectives**

- At least seventy percent (70%) of consumers enrolled in the case management program will avoid institutionalization as evidenced by the annual report that documents this finding.
- At least thirty five per cent (35%) of consumers will respond to the annual consumer satisfaction survey.
- At least seventy per cent (70%) of consumers responding to the annual consumer satisfaction survey will be satisfied with the service and find it beneficial to them.

## **VIII. Reporting and Other Requirements**

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

A, The grantee will enroll the clients into the CA GetCare database (<https://ca.getcare.com/caprovider/>), and enter all the required data in the Case Management Module, including medication list, assessment, progress notes, service plan etc.

B.The grantee will enter into the CA Getcare Service Unit section all the units of service by the 5th working day of the month for the preceding month.

C. Separate reports of POS and RPOS are to be completed for each client and maintained at the Linkages site. The report shall be made available to the OOA upon request. The RPOS report must include the type of respite service provided; the total hours of service provided; the hourly rate of the service; and the total cost showing the share paid by the caregiver and the share paid by RPOS.

D. Monthly reports must be entered into the Contracts Administration, Reporting, and Billing Online (CARBON) system regarding the following:

1. Number of unduplicated consumers served during the month.
2. Number of units of comprehensive assessment provided during the month
3. Number of units of care planning provided during the month.
4. Number of units of service authorization or arrangement provided during the month.
5. Number of units of case monitoring provided during the month.

E. Grantee will provide an annual report summarizing the contract activities, referencing the tasks as described in Section VI & VII- Service and Outcome Objectives. This report will also include accomplishments and challenges encountered by the Grantee. Grantee will enter the annual metrics in the CARBON database by the 15th of the month following the end of the program year on an annual basis:

- a) The percentages of consumers enrolled in the case management program have avoided institutionalization.
- b) The percentages of consumers responding to the annual consumer satisfaction survey have been satisfied with the service and find it beneficial to them.

F. Grantee shall submit Community Services Block Grant (CSBG) time study to HSA/DAAS for the months of February, May, August and November. . The time study is due on the 10th day following the time study month and shall be entered on line to this website link: <https://calmaa.hfa3.org/signin>

G. Grantee shall issue a Fiscal Closeout Report at the end of the fiscal year. The report is due to HSA no later than July 31 each grant year. This report must be submitted to the CARBON system.

H. Grantee will provide an annual consumer satisfaction survey report to OOA by March 15 each grant year.

I. Grantee shall develop and deliver ad hoc reports as requested by HSA.

J. Grantee is required to attend all mandatory case management training or other training as needed.

- K. Apart from reports requested to be sent via e-mail to the Program Analyst and/or Contract Manager, all other reports should be sent to the following addresses:

Monte Cimino, Program Analyst  
DAAS, Office on the Aging  
PO Box 7988  
San Francisco, CA 94120  
Email address: [monte.cimino@sfgov.org](mailto:monte.cimino@sfgov.org),

Tahir Shaikh, Contract Manager  
Human Services Agency  
PO Box 7988  
San Francisco, CA 94120

Email address: [Tahir.Shaikh@sfgov.org](mailto:Tahir.Shaikh@sfgov.org):

## IX. Monitoring Activities

- A. Program Monitoring: Program monitoring will include review of the participants' record entered into the case management module, compliance with specific program standards or requirements as stated in the OOA Policy Memorandum #39, Case Management Standards; client eligibility and targeted mandates, back up documentation for the units of service and all reporting, and progress of service and outcome objectives; how participant records are collected and maintained; reporting performance including monthly service unit reports on CA GetCare, maintenance of service unit logs; agency and organization standards, which include current organizational chart, evidence of provision of training to staff regarding the Elder Abuse Reporting; program operation, which includes a review of a written policies and procedures manual of all OOA-funded programs, written project income policies if applicable, grievance procedure posted in the center/office, and also given to the consumers who are homebound, hours of operation are current according to the site chart; a board of directors list and whether services are provided appropriately according to Sections VI and VII.
- 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, the current board roster and selected board minutes for compliance with the Sunshine Ordinance, and HIPAA compliance.

Appendix B, Page 2  
 Document Date: 6/4/2014  
 Program: Linkages  
 (Same as Line 9 on HSA #1)

**Salaries & Benefits Detail**

POSITION TITLE	Agency Totals		For HSA Program		7/1/14-6/30/15	7/1/15-6/30/16	7/1/16-6/30/17	TOTAL
	Annual Full Time Salary for FTE	Total % FTE	% FTE	Adjusted FTE	Budgeted Salary	Budgeted Salary	Budgeted Salary	7/1/14-6/30/17
	<b>Linkages</b>							
Care Manager 1	\$70,500	100%	100%	100%	\$70,500	\$70,500	\$70,500	\$211,500
Care Manager 2	\$47,500	100%	100%	100%	\$47,500	\$47,500	\$47,500	\$142,500
Care Manager 3	\$47,500	100%	100%	100%	\$47,500	\$47,500	\$47,500	\$142,500
Director of Community Programs	\$70,000	100%	35%	35%	\$24,500	\$24,500	\$24,500	\$73,500
<b>TOTALS</b>	<b>\$235,500</b>	<b>4.00</b>	<b>3.35</b>	<b>3.35</b>	<b>\$190,000</b>	<b>\$190,000</b>	<b>\$190,000</b>	<b>\$570,000</b>
FRINGE BENEFIT RATE	30.0%							
EMPLOYEE FRINGE BENEFITS	\$70,650				\$57,000	\$57,000	\$57,000	\$171,000
<b>TOTAL SALARIES &amp; BENEFITS</b>	<b>\$306,150</b>				<b>\$247,000</b>	<b>\$247,000</b>	<b>\$247,000</b>	<b>\$741,000</b>

## Appendix C – Method of Payment

- I. In accordance with Section 5 of the Grant Agreement, payments shall be made for actual costs incurred and reported for each month. Under no circumstances shall payment exceed the amount set forth in Section 5 Compensation of the Agreement.
- II. Grantee will submit all bills, invoices and related documentation in the format specified by SFHSA within 15 days after the month of service to SFHSA’s web-based Contracts Administration, Reporting, and Billing Online (CARBON) System at: <https://contracts.sfhsa.org>  
  
Grantee may submit bills, invoices and related documentation in the format specified by SFHSA via paper or email only upon special permission by their assigned Contract Manager.
- III. Grantee must sign up to receive payments electronically via Automated Clearing House (ACH). Remittance information will be provided through Paymode-X. Additional information and sign up is available at: <http://www.sfgov.org/ach>
- IV. The Executive Director or CFO must submit a letter of authorization designating specific users who will have access to CARBON to electronically submit and sign for invoices, budget revision requests, program reports, and view other information that is in CARBON.
  - A. Submittal of the invoice by designated authorized personnel with proper login credentials constitutes an electronic signature and certification of the invoice.
  - B. Authorized personnel with CARBON login credentials shall not share or internally reassign logins.
  - C. Grantee shall notify SFHSA Contract Manager immediately regarding any need for the restriction or termination of a previously authorized CARBON login.
- V. Invoices shall include actual expenditures incurred during the month, unless otherwise specified.
  - A. The invoice supplied shall include the total dollar amount claimed for the month.
  - B. There shall be no variance from the line item budget submitted which adversely affects program performance as contained in the Grantee’s proposal and specified in the grant.
  - C. The invoice shall show by line item:
    1. Budgeted amount (per approved grant budget or modification)
    2. Expenses for invoice period
    3. Expenses year-to-date
    4. % of budget expended
    5. Remaining balance
    6. Adjustments, including advance payment recovery
    7. Program income when specified in the grant agreement.
  - D. Personnel expenditures will show same line item categories by position detail. Detail will show name of employee, position name, %FTE and budgeted salary.
  - E. With written approval from SFHSA Program/Contract Manager, Grantee may adjust items within the existing budget of the grant in accordance with SFHSA Office of Contract Management Policy for Budget Line Item Revisions.
  - F. Supporting Documentation, except as discussed below need not be submitted with the invoice. However, Grantee must keep and make available as requested such supporting documentation for all expenditures for which reimbursement is requested for all costs so claimed. All charges incurred shall be due and payable only after services have been rendered, except as stated otherwise. Supporting documentation must be uploaded into CARBON and submitted along with the invoice.

- Documentation should be submitted with the invoice for all payroll expenses paid to budgeted personnel for the period covered by the invoice. Payroll information can be from a payroll service or a payroll ledger from the Grantee's accounting system
- For any and all non-recurring expenditures (e.g. equipment purchases/capital upgrades and building repair and upgrades) and/or items that exceed \$5,000, Grantee shall supply back-up documentation in the form of a paid invoice(s).
- Indirect costs shall not be applied to non-reoccurring expenses.
- All subcontracted services must be documented by submission of the subcontractor's paid invoice, regardless of dollar amount.
- If this grant agreement contains any Pass-Through funding requiring specific expense documentation from the source agency, Federal, State, Private or other then the following documentation shall also be included with each invoice submission:

Funding Agency: \_\_\_\_\_ CFDA or other Identification #: \_\_\_\_\_

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

- VI. Following SFHSA verification of submitted Invoice with required documentation of incurred expenses via CARBON, SFHSA will authorize payment within 10 business days after receipt of the invoice.
- VII. Within 45 days after the end of the grant period, Grantee shall submit a final report reflecting actual expenditures, which will be supported by the Grantee's accounting records. If a refund is due SFHSA, it will be submitted with the final report.
- VIII. Advances or prepayments are allowable in order to meet the Grantee cash flow needs in certain unique circumstances. The Agency, at its sole discretion, shall make available to the Grantee upon written request an advance amount not to exceed two (2) months or 1/6<sup>th</sup> of the total annualized grant award, or as mutually agreed upon. The advanced sum shall be deducted from the Grantee's monthly invoices at an equal rate each month that will enable repayment by the tenth month of the fiscal year. For a twelve-month grant the rate of repayment of the advance will be 1/10<sup>th</sup> per month from July to April. Requests for advance payment will be granted on a case-by-case basis and are not intended to be a regular "automatic" procedure. Approval will be a consensus of Program and Contract Staff.

Once the grant is certified, the Grantee, prior to distribution of any advanced payment, must fulfill the following conditions:

- 1. All contractual compliance requirements must be current, i.e., reports submitted and approved, corrective actions resolved, business tax and insurance certificates in place, prompt and fully documented billings.

2. The Grantee shall submit a written request with a narrative justification that fully describes the unique circumstances to the Program Manager and Contract Manager for review and approval.
  3. Final invoice from the preceding fiscal year must be received prior to advance distribution.
- IX. Timely Submission of Reports – If reports/documents are required, Grantee shall submit these reports prior to submitting invoices. Failure to submit required reports/documents in CARBON by specified deadlines may result in withholding of grant payments.

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

**GRANT AGREEMENT**

between

CITY AND COUNTY OF SAN FRANCISCO

and

**INSTITUTE ON AGING**

**THIS GRANT AGREEMENT** (this “Agreement”) is made this **1<sup>st</sup>** day of **July**, 2014, in the City and County of San Francisco, State of California, by and between **Institute on Aging, 3575 Geary Blvd, San Francisco, CA 94118** (“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) seeking a grant, for the purpose of funding the matters set forth in the Grant Plan (as hereinafter defined); and summarized briefly as follows:

**To provide Linkages Program;** and

**WHEREAS**, the Grant is funded with Federal dollars, CFDA #93.041; and

**WHEREAS**, approval for said Agreement was obtained when the Civil Service Commission approved Grant Number **4080-10/11** on **March 7, 2011**; and

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

**NOW, THEREFORE**, in consideration of the promises 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.

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

(n) “**HRC**” shall mean the Human Rights Commission of 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.

**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 “subgrantee,” “successor” or “assign” herein refers only to a subgrantee (“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 21.10-1 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, 2014** 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, 2015**.

### **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 subgrantees 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 **Nine Hundred Seventy Six Thousand, Four Hundred Forty Nine** Dollars (**\$976,449**) for the period **from July 1, 2014 to June 30, 2017, plus any contingent amount authorized by City and certified as available by the Controller.**

**Contingent amount:** Up to **Sixty Thousand** Dollars (**\$97,644**) for the period from **July 1, 2014 to June 30, 2017 (Y1), may be available, in the City's sole discretion, as a contingency subject to authorization by the City and certified as available by the Controller.**

The maximum amount of Grant Funds disbursed hereunder shall not exceed **One Million, Seventy Four Thousand, Ninety Three** Dollars (**\$1,074,093**) for the period from **July 1, 2014 to June 30, 2017 (Y1).**

Grantee understands that, of the maximum dollar disbursement listed in Section 5.1 of this Agreement, **the amount shown as the Contingent Amount may not to be used in Program Budgets attached to this Agreement as Appendix B, and is not available to Grantee without a revision to the Program Budgets of Appendix B specifically approved by Grant Agreement Administrator.** Grantee further understands that no payment of any portion of this contingency amount will be made unless and until such funds are certified as available by Controller. Grantee agrees to fully comply with these laws, regulations, and policies/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 OMB Circular A-122, 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 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 Disallowance and Single Audit Requirements:** If Grantee claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States 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. 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. **Single Audit Requirements:** Grantees that expend \$500,000 or more in a year from any and all Federal awards shall have a single audit

conducted in accordance with OMB Circular A-133. Grantees that expend less than \$500,000 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.

## **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 OMB Circular A-133, 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, 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.** Pursuant to San Francisco Administrative Code §21.35, any grantee, subgrantee or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. A grantee, subgrantee or consultant will be deemed to have submitted a false claim to the City if the grantee, subgrantee 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.** Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

(a) Grantee shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty (30) days following the date on which this Agreement becomes effective (unless Grantee has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Grantee; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

(b) Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Grantee of the terms of this Agreement. If, within thirty (30) days after Grantee receives written notice of such a breach, Grantee fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Grantee fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

(c) Any Subgrant entered into by Grantee shall require the subgrantee to comply, as to the subgrantee's Eligible Employees, with each of the terms of this section.

(d) Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

## **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 Subgrants.** 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 and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Grantee or loss of or damage to property, arising directly or indirectly from Grantee's performance of this Agreement, including, but not limited to, Grantee's use of facilities or equipment provided by City or others,

regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Grantee, its subcontractors or either's agent or employee. 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. In addition to Grantee's obligation to indemnify City, Grantee specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Grantee by City and continues at all times thereafter. Grantee shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement. Grantee shall also indemnify, defend, and hold City harmless from all suits or claims or administrative proceedings for breaches of federal and/or state law regarding the privacy of personally identifying information, personal health information, electronic records, or related topics, arising directly or indirectly from Grantee's performance of this Agreement, except where such breach is the result of the active negligence or willful misconduct of 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.
- (c) Commercial Automobile Liability Insurance with limits not less than one million dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- (d) Professional liability insurance for negligent acts, errors or omission with respect to professional or technical services, if any, required in the performance of this Agreement with limits not less than one million dollars (\$1,000,000) each claim.

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

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

(e) **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.

(f) **Cross Default.** Grantee defaults under any other agreement between Grantee and City (after expiration of any grace period expressly stated in such agreement).

(g) **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.

(h) **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.

## 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 this Chapter 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 subcontractors, and all agents and employees of Contractor and any subcontractor 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 subcontractors 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.

## **ARTICLE 13 ASSIGNMENTS AND SUBGRANTING**

**13.1 No Assignment by Grantee.** Grantee shall not, either directly or indirectly, assign, transfer, hypothecate, subgrant 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 Subgranting.** If Appendix E lists any permitted subgrantees, then notwithstanding any other provision of this Agreement to the contrary, Grantee shall have the right to subgrant 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 subgrant or delegate the whole of the Grant Plan. Grantee may subgrant 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 subgrantee 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 subgranted 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 subgrantee 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 Subgrant.** Each subgrant 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 subgrant shall incorporate all of the terms of this Agreement, insofar as they apply to the subgranted portion of the Grant Plan. Without limiting the scope of the foregoing, each subgrant shall provide City, with respect to the s 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 subgrant 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 GRANTEE 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 Grant Management  
P.O. Box7988  
San Francisco, CA 94120-7988  
Facsimile No. 415-557-5679

If to Grantee: Institute on Aging  
3330 Geary Blvd, 2<sup>nd</sup> Floor  
San Francisco, CA 94118  
Attn: J.Thomas Briody  
Facsimile No. (415) 750-4179  
Email: tbriody@ioaging.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 Left Blank by Agreement of the Parties

### 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.** As a condition to this Agreement, Grantee shall execute the “Chapter 12B Declaration: Nondiscrimination in Grants and Benefits” form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

(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 require 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. Grantee 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 Grantee's obligations under the MCO is set forth in this Section. Grantee is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Grantee to pay Grantee'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 Grantee is obligated to keep informed of the then-current requirements. Any subgrant entered into by Grantee shall require the subgrantee 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 Grantee's obligation to ensure that any subgrantees of any tier under this Agreement comply with the requirements of the MCO. If any subgrantee under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Grantee.

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

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

f. Grantee'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 Grantee fails to comply with these requirements. Grantee agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Grantee's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Grantee 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, Grantee fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Grantee fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, 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. Grantee represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

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

### **16.9. Requiring Health Benefits for Covered Employees**

Grantee agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Grantee shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Grantee chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Grantee is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Grantee's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Grantee if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Grantee fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Grantee fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each

of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subgrant entered into by Grantee shall require the Subgrantee to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Grantee shall notify City's Office of Grant Administration when it enters into such a Subgrant and shall certify to the Office of Grant Administration that it has notified the Subgrantee of the obligations under the HCAO and has imposed the requirements of the HCAO on Subgrantee through the Subgrant. Each Grantee shall be responsible for its Subgrantees' compliance with this Chapter. If a Subgrantee fails to comply, the City may pursue the remedies set forth in this Section against Grantee based on the Subgrantee's failure to comply, provided that City has first provided Grantee with notice and an opportunity to obtain a cure of the violation.

e. Grantee shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Grantee's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

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

g. Grantee shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Grant.

h. Grantee shall keep itself informed of the current requirements of the HCAO.

i. Grantee shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subgrantees and Subtenants, as applicable.

j. Grantee shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Grantee shall allow City to inspect Grantee's job sites and have access to Grantee's employees in order to monitor and determine compliance with HCAO.

l. City may conduct random audits of Grantee to ascertain its compliance with HCAO. Grantee agrees to cooperate with City when it conducts such audits.

m. If Grantee is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Grantee later enters into an agreement or agreements that cause Grantee's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Grantee and the City to be equal to or greater than \$75,000 in the fiscal year.

**16.10 Limitations on Contributions.** Through execution of this Agreement, Grantee acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who 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. Grantee 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. Grantee further acknowledges that the prohibition on contributions applies to each prospective party to the grant; each member of Grantee's board of directors; Grantee's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Grantee; any subgrantee listed in the bid or grant; and any committee that is sponsored or controlled by Grantee. Additionally, Grantee acknowledges that Grantee must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

#### **16.11 First Source Hiring Program.**

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

**b. First Source Hiring Agreement.** As an essential term of, and consideration for, any grant or property grant with the City, not exempted by the FSHA, the Grantee shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the grant or property grant. Grantees shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

(1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

(2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

(3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating

employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term 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 this Chapter. 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 this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

(6) Set the term of the requirements.

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

(8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

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

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

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

**e. Liquidated Damages.** Grantee agrees:

(1) To be liable to the City for liquidated damages as provided in this section;

(2) To be subject to the procedures governing enforcement of breaches of grants based on violations of grant provisions required by this Chapter as set forth in this section;



(3) That the grantee's commitment to comply with this Chapter is a material element of the City's consideration for this grant; that the failure of the grantee to comply with the grant provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the grantee from the first source hiring process, as determined by the FSHA during its first investigation of a grantee, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the grantee's failure to comply with its first source referral contractual obligations.

(4) That the continued failure by a grantee 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 grantee'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 grantee to comply with its first source referral contractual obligations.

(6) That the failure of grantees to comply with this Chapter, except property grantees, 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. Subgrants.** Any subgrant entered into by Grantee shall require the subgrantee to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

**16.12 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.

**16.13 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.

**16.14 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.

## **16.15 Reserved.**

**16.16 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.

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

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

**16.18 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.

**16.19 Slavery Era Disclosure. Left Blank by Agreement of the Parties**

**16.20 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.

**16.21. 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.

**16.22 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, HIPAA 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 Subgrantees**

**None**

**Appendix F**  
**Additional Terms**  
**Healthcare Insurance Portability and Accountability Act of 1996 ("HIPAA")**

**1. HIPAA**

The parties acknowledge that CITY is a Covered Entity as defined in the Healthcare Insurance Portability and Accountability Act of 1996 ("HIPAA") and is therefore required to abide by the Privacy Rule contained therein. The parties further agree that CONTRACTOR falls within the following definition under the HIPAA regulations:

- A Covered Entity subject to HIPAA and the Privacy Rule contained therein; or
- A Business Associate subject to the terms set forth in Appendix E;
- Not Applicable, CONTRACTOR will not have access to Protected Health Information.

**2. HUMAN SERVICES AGENCY PRIVACY AND DATA SECURITY POLICIES**

- A. The Human Services Agency (HSA) has developed Privacy and Data Security Policies that encompass all federal and state confidentiality and data security regulations, including HIPAA and local policies.

CONTRACTORS agree to abide by the HSA Privacy and Data Security Policies, unless otherwise granted a waiver from certain policies by HSA, and will be monitored and evaluated on the following criteria:

- B. HSA Privacy Policy is integrated in the program's governing policies and procedures regarding patient privacy and confidentiality.

As Measured by: Evidence that the policy and procedures that abides by the rules outlined in the HSA Privacy Policy have been adopted, approved and implemented.

- C. All staff that handles patient health information are trained (including new hires) and annually updated in the program's privacy/confidentiality policies and procedures.

As Measured by: Documentation exists showing individuals were trained.

- D. A Privacy Notice that meets the requirements of the Federal Privacy Rule (HIPAA) is written and provided to all patients/clients served in their threshold and other languages. If document is not available in the patient's/client's relevant language, verbal translation is provided.

As Measured by: Evidence in patient's/client's chart or electronic file that patient was "noticed." (Examples in English, Cantonese, Vietnamese, Tagalog, Spanish, Russian will be provided.)

- E. A Summary of the above Privacy Notice is posted and visible in registration and common areas of treatment facility.

As Measured by: Presence and visibility of posting in said areas. (Examples in English, Cantonese, Vietnamese, Tagalog, Spanish, Russian will be provided.)

- F. Each disclosure of a patient's/client's health information for purposes other than treatment, payment, or operations is documented.

As Measured by: Documentation exists

- G. Authorization for disclosure of a patient's/client's health information is obtained prior to release (1) to providers outside the HSA Safety Net or (2) from a substance abuse program.

As Measured by: An authorization form that meets the requirements of the Federal Privacy Rule (HIPAA) is signed and in patient's/client's chart/file

### **3. THIRD PARTY BENEFICIARIES**

No third parties are intended by the parties hereto to be third party beneficiaries under this Agreement, and no action to enforce the terms of this Agreement may be brought against either party by any person who is not a party hereto.

### **4. CERTIFICATION REGARDING LOBBYING**

CONTRACTOR certifies to the best of its knowledge and belief that:

- A. No federally appropriated funds have been paid or will be paid, by or on behalf of CONTRACTOR to any persons for influencing or attempting to influence an officer or an employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the entering into of any federal cooperative agreement, or the extension, continuation, renewal, amendment, or modification of a federal contract, grant, loan or cooperative agreement.
- B. If any funds other than federally appropriated funds have been paid or will be paid to any persons for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, CONTRACTOR shall complete and submit Standard Form -111, "Disclosure Form to Report Lobbying," in accordance with the form's instructions.
- C. CONTRACTOR shall require the language of this certification be included in the award documents for all subawards at all tiers, (including subcontracts, subgrants, and contracts under grants, loans and cooperation agreements) and that all subrecipients shall certify and disclose accordingly.
- D. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## **5. MATERIALS REVIEW**

CONTRACTOR agrees that all materials, including without limitation print, audio, video, and electronic materials, developed, produced, or distributed by personnel or with funding under this Agreement shall be subject to review and approval by the Contract Administrator prior to such production, development or distribution. CONTRACTOR agrees to provide such materials sufficiently in advance of any deadlines to allow for adequate review. CITY agrees to conduct the review in a manner which does not impose unreasonable delays.

## Appendix G

# BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum (“Addendum”) supplements and is made a part of the contract (“Contract”) by and between the City and County of San Francisco, Covered Entity (“CE”) and Contractor, Business Associate (“BA”).

### RECITALS

- A. CE wishes to disclose certain information to BA pursuant to the terms of the Contract, some of which may constitute Protected Health Information (“PHI”) (defined below).
- B. CE and BA intend to protect the privacy and provide for the security of PHI disclosed to BA pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws.
- C. As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require CE to enter into a contract containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(a) and (e) and 164.504(e) of the Code of Federal Regulations (“C.F.R.”) and contained in this Addendum.

In consideration of the mutual promises below and the exchange of information pursuant to this Addendum, the parties agree as follows:

#### 1. Definitions

- a. **Breach** shall have the meaning given to such term under the HITECH Act and HIPAA Regulations [42 U.S.C. Section 17921 and 45 C.F.R. Section 164.402].
- b. **Breach Notification Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and D.
- c. **Business Associate** shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including, but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.
- d. **Covered Entity** shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.
- e. **Data Aggregation** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- f. **Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- g. **Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.
- h. **Electronic Health Record** shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.

- i. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- j. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- k. **Protected Health Information or PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the part, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].
- l. **Protected Information** shall mean PHI provided by CE to BA or created, maintained, received or transmitted by BA on CE's behalf.
- m. **Security Incident** shall have the meaning given to such term under the Security Rule, including, but not limited to, 45 C.F.R. Section 164.304.
- n. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- o. **Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h) and 45 C.F.R. Section 164.402.

## 2. **Obligations of Business Associate**

- a. **Permitted Uses.** BA shall use Protected Information only for the purpose of performing BA's obligations under the Contract and as permitted or required under the Contract and Addendum, or as required by law. Further, BA shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by CE. However, BA may use Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE [45 C.F.R. Sections 164.504(e)(2) and 164.504(e)(4)(i)].
- b. **Permitted Disclosures.** BA shall disclose Protected Information only for the purpose of performing BA's obligations under the Contract and as permitted or required under the Contract and Addendum, or as required by law. BA shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by CE. However, BA may disclose Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (ii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE. If BA discloses Protected Information to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Addendum and used or disclosed only as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BA of any breaches, suspected

breaches, security incidents, or unauthorized uses or disclosures of the Protected Information in accordance with paragraph 2. m. of the Addendum, to the extent it has obtained knowledge of such occurrences [42 U.S.C. Section 17932; 45 C.F.R. Section 164.504(e)].

- c. **Prohibited Uses and Disclosures.** BA shall not use or disclose PHI other than as permitted or required by the Contract and Addendum, or as required by law. BA shall not use or disclose Protected Information for fundraising or marketing purposes. BA shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates [42 U.S.C. Section 17935(a) and 45 C.F.R. Section 164.522(a)(vi)]. BA shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of CE and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2), and the HIPAA regulations, 45 C.F.R. Section 164.502(a)(5)(ii); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to the Contract.
- d. **Appropriate Safeguards.** BA shall implement appropriate safeguards to prevent the use or disclosure of Protected Information other than as permitted by the Contract or Addendum, including, but not limited to, administrative, physical and technical safeguards in accordance with the Security Rule, including, but not limited to, 45 C.F.R. Sections 164.308, 164.310, and 164.312. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. BA shall comply with the policies and procedures and documentation requirements of the Security Rule, including, but not limited to, 45 C.F.R. Section 164.316. [42 U.S.C. Section 17931]
- e. **Business Associate's Subcontractors and Agents.** BA shall ensure that any agents and subcontractors that create, receive, maintain or transmit Protected Information on behalf of BA, agree in writing to the same restrictions and conditions that apply to BA with respect to such Protected Information and implement the safeguards required by paragraph 2.d. above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. BA shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. Sections 164.530(f) and 164.530(e)(1)).
- f. **Accounting of Disclosures.** Within ten (10) calendar days of a request by CE for an accounting of disclosures of Protected Information or upon any disclosure of Protected Information for which CE is required to account to an individual, BA and its agents and subcontractors shall make available to CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935 (c), as determined by CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents and subcontractors for at least six(6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an Electronic Health Record. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. If a patient submits a request for an accounting directly to BA or its agents or subcontractors, BA shall forward the request to CE in writing within five(5) calendar days.

- g. **Governmental Access to Records.** BA shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to CE and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining BA's compliance with HIPAA [45 C.F.R. Section 164.504(e)(2)(ii)(I)]. BA shall provide CE a copy of any Protected Information and other documents and records that BA provides to the Secretary concurrently with providing such Protected Information to the Secretary.
- h. **Minimum Necessary.** BA, its agents and subcontractors shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure. [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)] BA understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."
- i. **Data Ownership.** BA acknowledges that BA has no ownership rights with respect to the Protected Information.
- j. **Notification of Possible Breach.** BA shall notify CE within twenty-four (24) hours of any suspected or actual breach of Protected Information; any use or disclosure of Protected Information not permitted by the Contract or Addendum; any security incident (i.e., any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system) related to Protected Information, and any actual or suspected use or disclosure of data in violation of any applicable federal or state laws by BA or its agents or subcontractors. The notification shall include, to the extent possible, the identification of each individual who unsecured Protected Information has been, or is reasonably believed by the business associate to have been, accessed, acquired, used, or disclosed, as well as any other available information that CE is required to include in notification to the individual, the media, the Secretary, and any other entity under the Breach Notification Rule and any other applicable state or federal laws, including, but not limited, to 45 C.F.R. Section 164.404 through 45 C.F.R. Section 164.408, at the time of the notification required by this paragraph or promptly thereafter as information becomes available. BA shall take (i) prompt corrective action to cure any deficiencies and (ii) any action pertaining to unauthorized uses or disclosures required by applicable federal and state laws. (This provision should be negotiated.) [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)]
- k. **Breach Pattern or Practice by Business Associate's Subcontractors and Agents.** Pursuant to 42 U.S.C. Section 17934(b) and 45 C.F.R. Section 164.504(e)(1)(ii), if the BA knows of a pattern of activity or practice of a subcontractor or agent that constitutes a material breach or violation of the subcontractor or agent's obligations under the Contract or Addendum or other arrangement, the BA must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the BA must terminate the Contract or other arrangement if feasible. BA shall provide written notice to CE of any pattern of activity or practice of a subcontractor or agent that BA believes constitutes a material breach or violation of the subcontractor or agent's obligations under the Contract or Addendum or other arrangement within five (5) days of discovery and shall meet with CE to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

### 3. Termination

- a. **Material Breach.** A breach by BA of any provision of this Addendum, as determined by CE, shall constitute a material breach of the Contract and shall provide grounds for immediate termination of the



Contract, any provision in the Contract to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii)].

- b. Judicial or Administrative Proceedings.** CE may terminate the Contract, effective immediately, if (i) BA is named as defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.
- c. Effect of Termination.** Upon termination of the Contract for any reason, BA shall, at the option of CE, return or destroy all Protected Information that BA and its agents and subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by CE, BA shall continue to extend the protections and satisfy the obligations of Section 2 of this Addendum to such information, and limit further use and disclosure of such PHI to those purposes that make the return or destruction of the information infeasible [45 C.F.R. Section 164.504(e)(ii)(2)(J)]. If CE elects destruction of the PHI, BA shall certify in writing to CE that such PHI has been destroyed in accordance with the Secretary's guidance regarding proper destruction of PHI.
- d. Disclaimer**

CE makes no warranty or representation that compliance by BA with this Addendum, HIPAA, the HITECH Act, or the HIPAA Regulations will be adequate or satisfactory for BA's own purposes. BA is solely responsible for all decisions made by BA regarding the safeguarding of PHI.

#### **4. Amendment to Comply with Law.**

The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Contract or Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations and other applicable state or federal laws relating to the security or confidentiality of PHI. The parties understand and agree that CE must receive satisfactory written assurance from BA that BA will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable laws. CE may terminate the Contract upon thirty (30) days written notice in the event (i) BA does not promptly enter into negotiations to amend the Contract or Addendum when requested by CE pursuant to this section or (ii) BA does not enter into an amendment to the Contract or Addendum providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

#### **5. Reimbursement for Fines**

In the event that CE pays a fine to a state or federal regulatory agency based on an impermissible use or disclosure of PHI by BA or its subcontractors or agents, then BA shall reimburse CE in the amount of such fine within thirty (30) calendar days.

# CITY AND COUNTY OF SAN FRANCISCO

## FIRST AMENDMENT

### TO THE GRANT BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND INSTITUTE ON AGING

THIS AMENDMENT (this “Amendment”) is made as of **November 1, 2013** in San Francisco, California, by and between **Institute on Aging, 3575 Geary Blvd San Francisco, CA 94118**, hereinafter referred to as “Grantee”, and the City and County of San Francisco,

#### RECITALS

WHEREAS, City and Grantee have entered into the Agreement (as defined below); and

WHEREAS, City and Grantee desire to modify the Agreement on the terms and conditions set forth herein to **increase the grant amount by \$41,694 for cost of doing business and add back funding for infrastructures improvements and service expansion.**

WHEREAS, Grantee represents and warrants that it is qualified to perform the services required by City as set forth under this Grant and Modification Agreement;

NOW, THEREFORE, Grantee and the City agree as follows:

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

**a. Agreement.** The term “Agreement” shall mean the Agreement dated **July 1, 2013** between Grantee and City.

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

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

**(a) Article 5.1 Maximum Amount of Grant Funds** of the Agreement currently reads as follows:

“In no event shall the amount of Grant Funds disbursed hereunder exceed **\$221,511 (Two Hundred Twenty One Thousand, Five Hundred Eleven Dollars).**”

Such section is hereby amended in its entirety to read as follows:

“In no event shall the amount of Grant Funds disbursed hereunder exceed **\$263,205 (Two Hundred Sixty Three Thousand, Two Hundred Five Dollars).**”

**(b) Appendix A.** Appendix A of the aforesaid agreement describes the services to be provided.

Appendix A is hereby superceded in its entirety by Appendix A-1, pp. 1-4, attached to this Modification Agreement, which displays the additional services to be provided under this Modification Agreement.

- (c) **Appendix B.** Appendix B, Calculation of Charges, of the Aforesaid Agreement displays the original total amount of **\$221,511**.

Such section is hereby superseded in its entirety by Appendix B-1, Calculation of Charges, which includes the increased grant amount of \$41,694 and displays the revised total grant amount of \$263,205.

- 3. Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after **July 1, 2013**.

- 4. Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.



**APPENDIX A1 - SERVICES TO BE PROVIDED**  
**Institute on Aging**

**Home-Delivered Meals for Younger Adults with Disabilities (HDM-YAD)**  
**Effective July 1, 2013 – June 30, 2016**

**I. PURPOSE**

- II. The purpose of this grant is to conduct intake and comprehensive assessment for YAD consumers requesting for HDM, to determine their eligibility for this program, to refer the consumer to the appropriate meal service provider, and to provide referral to other services as needed to enable these consumers to continue to remain living in their home and avoid institutionalization and promote and maintain the optimum level of functioning in the most independent setting.

**II. DEFINITIONS**

Grantee	Institute on Aging
CARBON	Human Service Agency's Contracts Administration Reporting and Billing On-line (CARBON) system
DAAS	Department of Adult and Aging Services
Disability	<p>A condition attributable to mental or physical impairment, or a combination of mental and physical impairments including hearing and visual impairments, that results in substantial functional limitations in one (1) or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, economic self-sufficiency, cognitive functioning, and emotional adjustment.</p> <p><i>Physical disability or mobile limitation</i> includes wheelchair users, cane or walker users, limited reach ranges, limited hand movement, etc. <i>Chronic illness</i> includes HIV, lung disorders, heart disease/stroke, immune system disorders, diabetes, neurological disorders, etc. <i>Sensory disability</i> includes deaf, hard of hearing, blind, low vision, Aphasia, stuttering, etc. <i>Mental disability</i> includes psychiatric disabilities, depression, anxiety, obsessive-compulsive disorder, phobias, schizophrenia, bi-polar disorder, borderline personality disorder, etc. <i>Cognitive disability</i> includes Down's syndrome, traumatic brain injury, learning disabilities, etc.</p>
HSA	Human Services Agency of the City and County of San Francisco
HACCP	Hazard Analysis of Critical Control Points. A prevention-based food safety system focusing on time and temperature control at different crucial food service system points
Home-Delivered Meals	Meals are provided to individuals with incapacitating disability, isolation, lack of support network and have no safe, healthy alternative for meals, and consist of the procurement, preparation, service and delivery of meals. This service requires an annual comprehensive assessment by the DAAS approved service provider.
CA-GetCare	A web-based application that provides specific functionalities for contracted agencies to use to perform consumer

intake/assessment/enrollment, record service units, run reports, etc.

OOA

Office on Aging

YAD

Younger Adults with Disabilities are adults age 18-59 with disability.

### III. TARGET POPULATIONS

Individuals between the age of 18 and 59 who has a mental and/or physical impairment, that results in substantial functional limitations in one (1) or more of the following areas of major life activity: self-care (especially grocery shopping and meal preparation and have no safe, healthy alternative for meals), receptive and expressive language, learning, mobility, self-direction, capacity for independent living, economic self-sufficiency, cognitive functioning, and emotional adjustment.

### IV. SERVICES TO BE PROVIDED

- A. Grantee to develop and maintain current policies and procedures with the approval of DAAS-OOA to meet the needs of the consumers and program standards.
- B. Grantee to provide intake and assessment services by qualified social worker possessing either a BSW or MSW. Intake and assessment services include:
  1. **Initial Intake:** Intake and screening of calls from referring agencies or individual for HDM for non-senior adults with disabilities. During the intake process, when HDM is not yet available, the intake staff will refer the case to other social service supports as needed.
  2. **Comprehensive Assessment:** To collect information about a consumer with multiple needs (social, environmental, physical and mental) and determine the need for a home-delivered meals. The assessment shall be conducted at the client's home before meal services are provided. Reassessment of the need must be conducted no less than annually at the client's home. The assessment form shall be approved by the OOA.
  3. **Other Related Service:** Refer and assign appropriate consumers to the participating HDM service providers, maintaining and prioritizing a waiting list according to OOA requirements and coordinating regular meetings with the participating HDM service providers.
- B. Grantee must maintain all consumer data in a confidential manner.
- C. Conduct consumer satisfaction survey yearly and provide results to OOA Program Analyst by March 15<sup>th</sup>. The survey tool will be provided by OOA.
- D. The Grantee will attend the mandatory in-service training coordinated and provided by the OOA. and share the information with their staff and volunteers.
- E. The Grantee will have to be compliant with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy and security rules.

## **V. SERVICE OBJECTIVES**

On an annual basis:

- A. Grantee will provide enroll 297 unduplicated consumers for home-delivered meals services per year
- B. Grantee will Conduct 297 comprehensive assessments, screening and appropriate referral per year via home-visit and complete all paper work required by DAAS-OOA.

## **VI. OUTCOME OBJECTIVES**

- A. To provide quality services that attains a high satisfaction level from participants. At least 85% of participants are satisfied with the service delivery by staff and/or volunteers.

## **VII. MONITORING ACTIVITIES**

- A. Nutrition Program Monitoring: Program monitoring will include review of kitchen facility in accordance with CRFD and OOA nutrition standards for NSAD, back up documentation for the units of service and all reporting, and progress of service and outcome objectives; how participant records are collected and maintained; consumer data entry on CA-GetCare; reporting performance including monthly service unit reports on CA-GetCare, maintenance of service unit logs; agency and organization standards related to nutrition program operation, current organizational chart in the food service department, grievance policies and procedures, hours of operation are current according to the site chart; employee resume and credentials, job description, and whether progress notes are maintained according to the OOA Nutrition standards.
- 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.

## **VII. REPORTING REQUIREMENTS**

- A. Grantee will enter into CA-GetCare all the units of service in the Service Recording Tool by the 5<sup>th</sup> working day of the month for the preceding month.
- B. Grantee will provide a monthly report of number of meals served as described in Section V – Service Objectives. Grantee will enter the number of meals provided in CARBON database by the 15<sup>th</sup> of the following month.
- C. Grantee will enter the annual Outcome Objective metrics in the CARBON database by the 15<sup>th</sup> of the month following the end of the program year.
  - The percentage of participants surveyed that have indicated excellent or good in rating the service delivery by staff and/or volunteers.

- D. Grantee shall issue a Fiscal Closeout Report at the end of the fiscal year. The report is due to HSA no later than July 31 each grant year. This report must be submitted to the CARBON system. Additional reports may be required at other points in the fiscal year if necessary to meet state requirements.
- E. Grantee will provide other reports as requested. Apart from the on-line reporting via CaGetCare, and reports requested to be sent via e-mail to the Nutritionist and/or Contract Manager, Monthly and Annual Reports will be entered into CARBON system. For assistance with reporting requirements or submission of reports, contact:

Alicia Broussard  
Contracts Manager/HSA  
P.O. Box 7988  
San Francisco, CA 94120  
[Alicia.Broussard@sfgov.org](mailto:Alicia.Broussard@sfgov.org)

Linda Lau  
Nutritionist/OOA  
1650 Mission Street, 5<sup>th</sup> Floor  
San Francisco, CA 94103  
[Linda.Lau@sfgov.org](mailto:Linda.Lau@sfgov.org)



## Appendix B1-- Calculation of Charges

- I. The City and County will reimburse the grantee for services provided based on the following schedule of rates.

Nutrition Compliance:

Description:	<u>Rate</u>	<u>Unit</u>	<u>Annual Total</u>
<b>YAD HDM Assessment</b> (includes comprehensive for new and continuing consumers), per unduplicated consumer	\$293	297	\$86,895
HDM Equipment Data Plan			\$840
<b>Total</b>			<b>\$87,735</b>

- II. **Total contract amount is not to exceed \$263,205.**
- A. For Fiscal Year 2013-2014, the contract amount will not exceed \$87,735.
- B. For Fiscal Year 2014-2015, the contract amount will not exceed \$87,735.
- C. For Fiscal Year 2015-2016, the contract amount will not exceed \$87,735.
- III. Grantee will invoice the City and County on a monthly basis for actual services provided.

## Appendix C – Method of Payment

- I. In accordance with Section 5 of the Grant Agreement, payments shall be made for actual costs incurred and reported for each month. Under no circumstances shall payment exceed the amount set forth in Section 5 Compensation of the Agreement.
- II. Grantee will submit all bills, invoices and related documentation in the format specified by SFHSA within 15 days after the month of service to SFHSA's web-based Contracts Administration, Reporting, and Billing Online (CARBON) System at: <https://contracts.sfhsa.org>  
  
Grantee may submit bills, invoices and related documentation in the format specified by SFHSA via paper or email only upon special permission by their assigned Contract Manager.
- III. Grantee must sign up to receive payments electronically via Automated Clearing House (ACH). Remittance information will be provided through Paymode-X. Additional information and sign up is available at: <http://www.sfgov.org/ach>
- IV. The Executive Director or CFO must submit a letter of authorization designating specific users who will have access to CARBON to electronically submit and sign for invoices, budget revision requests, program reports, and view other information that is in CARBON.
  - A. Submittal of the invoice by designated authorized personnel with proper login credentials constitutes an electronic signature and certification of the invoice.
  - B. Authorized personnel with CARBON login credentials shall not share or internally reassign logins.
  - C. Grantee shall notify SFHSA Contract Manager immediately regarding any need for the restriction or termination of a previously authorized CARBON login.
- V. Invoices shall include actual expenditures incurred during the month, unless otherwise specified.
  - A. The invoice supplied shall include the total dollar amount claimed for the month.
  - B. There shall be no variance from the line item budget submitted which adversely affects program performance as contained in the Grantee's proposal and specified in the grant.
  - C. The invoice shall show by line item:
    1. Budgeted amount (per approved grant budget or modification)
    2. Expenses for invoice period
    3. Expenses year-to-date
    4. % of budget expended
    5. Remaining balance
    6. Adjustments, including advance payment recovery
    7. Program income when specified in the grant agreement.
  - D. Personnel expenditures will show same line item categories by position detail. Detail will show name of employee, position name, %FTE and budgeted salary.
  - E. With written approval from SFHSA Program/Contract Manager, Grantee may adjust items within the existing budget of the grant in accordance with SFHSA Office of Contract Management Policy for Budget Line Item Revisions.
  - F. Supporting Documentation, except as discussed below need not be submitted with the invoice. However, Grantee must keep and make available as requested such supporting documentation for all expenditures for which reimbursement is requested for all costs so claimed. All charges incurred shall be due and payable only after services have been rendered, except as stated otherwise. Supporting documentation must be uploaded into CARBON and submitted along with the invoice.

- Documentation should be submitted with the invoice for all payroll expenses paid to budgeted personnel for the period covered by the invoice. Payroll information can be from a payroll service or a payroll ledger from the Grantee's accounting system
- For any and all non-recurring expenditures (e.g. equipment purchases/capital upgrades and building repair and upgrades) and/or items that exceed \$5,000, Grantee shall supply back-up documentation in the form of a paid invoice(s).
- Indirect costs shall not be applied to non-reoccurring expenses.
- All subcontracted services must be documented by submission of the subcontractor's paid invoice, regardless of dollar amount.
- If this grant agreement contains any Pass-Through funding requiring specific expense documentation from the source agency, Federal, State, Private or other then the following documentation shall also be included with each invoice submission:

Funding Agency \_\_\_\_\_ CFDA or other Identification # \_\_\_\_\_

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

- VI. Following SFHSA verification of submitted Invoice with required documentation of incurred expenses via CARBON, SFHSA will authorize payment within 10 business days after receipt of the invoice.
- VII. Within 45 days after the end of the grant period, Grantee shall submit a final report reflecting actual expenditures, which will be supported by the Grantee's accounting records. If a refund is due SFHSA, it will be submitted with the final report.
- VIII. Advances or prepayments are allowable in order to meet the Grantee cash flow needs in certain unique circumstances. The Agency, at its sole discretion, shall make available to the Grantee upon written request an advance amount not to exceed two (2) months or 1/6<sup>th</sup> of the total annualized grant award, or as mutually agreed upon. The advanced sum shall be deducted from the Grantee's monthly invoices at an equal rate each month that will enable repayment by the tenth month of the fiscal year. For a twelve-month grant the rate of repayment of the advance will be 1/10<sup>th</sup> per month from July to April. Requests for advance payment will be granted on a case-by-case basis and are not intended to be a regular "automatic" procedure. Approval will be a consensus of Program and Contract Staff.

Once the grant is certified, the Grantee, prior to distribution of any advanced payment, must fulfill the following conditions:

- 1. All contractual compliance requirements must be current, i.e., reports submitted and approved, corrective actions resolved, business tax and insurance certificates in place, prompt and fully documented billings.

2. The Grantee shall submit a written request with a narrative justification that fully describes the unique circumstances to the Program Manager and Contract Manager for review and approval.
  3. Final invoice from the preceding fiscal year must be received prior to advance distribution.
- IX. Timely Submission of Reports – If reports/documents are required, Grantee shall submit these reports prior to submitting invoices. Failure to submit required reports/documents in CARBON by specified deadlines may result in withholding of grant payments.

**City and County of San Francisco  
Human Services Agency  
Fiscal Year 2013-2014**

**Appendix D – Interests In Other City Contracts**

**Agency:** Institute on Aging

**Program:** Home-Delivered Meals for Younger Adults with Disabilities (HDM-YAD)

City Department	Contract	Dates	Current Year Budget
Department of Aging & Adult Services	Adult Day Center	07/01/2011-06/30/2014	89,000
	Alzheimers Day Care Resource Center	07/01/2011-06/30/2014	81,250
	Case Management	07/01/2010-06/30/2014	196,240
	Community Living Funds	07/07/2010-06/30/2014	2,848,117
	Elder Abuse Prevention (PVLL)	07/01/2011-06/30/2014	46,867
	Forensic Center	07/01/2011-06/30/2014	50,000
	Friendship Line	07/01/2011-06/30/2014	147,277
	Linkages	07/01/2010-06/30/2014	319,767
	Home Delivered Meals	07/01/2010-06/30/2014	73,837
	<b>Total</b>		
Department of Public Health	Community Behavioral Health Services	07/01/2011-06/30/2012	259,775
<b>Total</b>			
DOSW	Preventing Violence in Later Life	07/01/2013-06/30/2014	31,726
<b>TOTAL</b>			<b>4,143,856</b>

## APPENDIX F - SITE CHART A: SITE LOCATIONS

AGENCY: Institute on Aging

OFFICE ON THE AGING

FY 2013-2014

CONTRACT MAILING ADDRESS: 3575 Geary Boulevard, San Francisco, CA 94118

SITES: (includes congregate nutrition, community/social services, home-delivered meals, food distribution, etc.) <b>Name of Site</b>	Alzheimer's Day Care Resource Center	Consortium for Elder Abuse Prevention	Center for Elderly Suicide Prevention – Friendship Line	Linkages	Case Management
Address and Zip	3600 Geary Blvd. San Francisco, CA 94118	3330 Geary Blvd. San Francisco, CA 94118	3330 Geary Blvd. San Francisco, CA 94118	3626 Geary Blvd. San Francisco, CA 94118	3626 Geary Blvd. San Francisco, CA 94118
Phone Number	(415) 750-5330	(415) 750-4180 x 225	(415) 750-4180 x 233	(415) 750-4141	(415) 750-4150
Fax Number	(414) 750-5323	(415) 750-4136	(415) 750-4136	(415) 750-4196	(415) 750-4196
Neighborhood	Citywide	Citywide	Citywide	Citywide	Citywide
Person in Charge Site Manager	Cindy Kauffman Tracy McCloud	Erika Falk Talitha Gunn	Patrick Arbore Eugene Lim	Elisa Alarcon Xanthe Wong	Elisa Alarcon Xanthe Wong
Programs Offered	Specialized day program for Individuals with dementia	Administration of Elder Abuse Prevention Consortium & Elder Abuse Forensic Center	Community Services/ Social Services	Case Management	Case Management
Days Open	<input checked="" type="checkbox"/> Mon <input checked="" type="checkbox"/> Tues <input checked="" type="checkbox"/> Wed <input checked="" type="checkbox"/> Thurs <input checked="" type="checkbox"/> Fri <input type="checkbox"/> Sat <input type="checkbox"/> Sun	<input checked="" type="checkbox"/> Mon <input checked="" type="checkbox"/> Tues <input checked="" type="checkbox"/> Wed <input checked="" type="checkbox"/> Thurs <input checked="" type="checkbox"/> Fri <input type="checkbox"/> Sat <input type="checkbox"/> Sun	<input checked="" type="checkbox"/> Mon <input checked="" type="checkbox"/> Tues <input checked="" type="checkbox"/> Wed <input checked="" type="checkbox"/> Thurs <input checked="" type="checkbox"/> Fri <input checked="" type="checkbox"/> Sat <input checked="" type="checkbox"/> Sun	<input checked="" type="checkbox"/> Mon <input checked="" type="checkbox"/> Tues <input checked="" type="checkbox"/> Wed <input checked="" type="checkbox"/> Thurs <input checked="" type="checkbox"/> Fri <input type="checkbox"/> Sat <input type="checkbox"/> Sun	<input checked="" type="checkbox"/> Mon <input checked="" type="checkbox"/> Tues <input checked="" type="checkbox"/> Wed <input checked="" type="checkbox"/> Thurs <input checked="" type="checkbox"/> Fri <input type="checkbox"/> Sat <input type="checkbox"/> Sun
Hours Open	8:00 am – 5:00 pm	8:00 am – 5:00 pm	24 hours a day	8:00 am – 4:30 pm	8:00 am – 4:30 pm
Hours of scheduled programming	9:30 am – 2:30 pm	N/A	N/A	N/A	N/A
Hours of meal service	N/A	N/A	N/A	N/A	N/A
Annual number of meals at site	N/A	N/A	N/A	N/A	N/A
Average number of meals per day	N/A	N/A	N/A	N/A	N/A
Total number of service days in FY	252	254	365	254	254
Days closed	Saturday, Sunday, New Year's Day, MLK Day, Presidents' Day, Memorial Day, July 4 <sup>th</sup> , Labor Day, Thanksgiving + Friday, Christmas Day	Saturday, Sunday, New Year's Day, MLK Day, Presidents' Day, Memorial Day, July 4 <sup>th</sup> , Labor Day, Thanksgiving + Friday, Christmas Day	Open every day	Saturday, Sunday, New Year's Day, MLK Day, Presidents' Day, Memorial Day, July 4 <sup>th</sup> , Labor Day, Thanksgiving + Friday, Christmas Day	Saturday, Sunday, New Year's Day, MLK Day, Presidents' Day, Memorial Day, July 4 <sup>th</sup> , Labor Day, Thanksgiving + Friday, Christmas Day
Accessible to Persons with Disabilities	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	* <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	* <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

\* If an office appointment is necessary for a disabled Linkages consumer and/or family member, a meeting can be arranged in a downstairs office at the accessible ADCRC facility.

## **Appendix G Additional Terms**

### **1. HIPAA**

The parties acknowledge that CITY is a Covered Entity as defined in the Healthcare Insurance Portability and Accountability Act of 1996 ("HIPAA") and is therefore required to abide by the Privacy Rule contained therein. The parties further agree that CONTRACTOR falls within the following definition under the HIPAA regulations:

- A Covered Entity subject to HIPAA and the Privacy Rule contained therein;
- or
- A Business Associate subject to the terms set forth in Appendix E;
- Not Applicable, CONTRACTOR will not have access to Protected Health Information.

### **2. HUMAN SERVICES AGENCY PRIVACY AND DATA SECURITY POLICIES**

A. The Human Services Agency (HSA) has developed Privacy and Data Security Policies that encompass all federal and state confidentiality and data security regulations, including HIPAA and local policies.

CONTRACTORS agree to abide by the HSA Privacy and Data Security Policies, unless otherwise granted a waiver from certain policies by HSA, and will be monitored and evaluated on the following criteria:

B. HSA Privacy Policy is integrated in the program's governing policies and procedures regarding patient privacy and confidentiality.

As Measured by: Evidence that the policy and procedures that abides by the rules outlined in the HSA Privacy Policy have been adopted, approved and implemented.

C. All staff that handles patient health information are trained (including new hires) and annually updated in the program's privacy/confidentiality policies and procedures.

As Measured by: Documentation exists showing individuals were trained.

D. A Privacy Notice that meets the requirements of the Federal Privacy Rule (HIPAA) is written and provided to all patients/clients served in their threshold and other languages. If document is not available in the patient's/client's relevant language, verbal translation is provided.

As Measured by: Evidence in patient's/client's chart or electronic file that patient was "noticed." (Examples in English, Cantonese, Vietnamese, Tagalog, Spanish, Russian will be provided.)

- E. A Summary of the above Privacy Notice is posted and visible in registration and common areas of treatment facility.  
  
As Measured by: Presence and visibility of posting in said areas. (Examples in English, Cantonese, Vietnamese, Tagalog, Spanish, Russian will be provided.)
- F. Each disclosure of a patient's/client's health information for purposes other than treatment, payment, or operations is documented.  
  
As Measured by: Documentation exists
- G. Authorization for disclosure of a patient's/client's health information is obtained prior to release (1) to providers outside the HSA Safety Net or (2) from a substance abuse program.  
  
As Measured by: An authorization form that meets the requirements of the Federal Privacy Rule (HIPAA) is signed and in patient's/client's chart/file

### **3. THIRD PARTY BENEFICIARIES**

No third parties are intended by the parties hereto to be third party beneficiaries under this Agreement, and no action to enforce the terms of this Agreement may be brought against either party by any person who is not a party hereto.

### **4. CERTIFICATION REGARDING LOBBYING**

CONTRACTOR certifies to the best of its knowledge and belief that:

- A. No federally appropriated funds have been paid or will be paid, by or on behalf of CONTRACTOR to any persons for influencing or attempting to influence an officer or an employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the entering into of any federal cooperative agreement, or the extension, continuation, renewal, amendment, or modification of a federal contract, grant, loan or cooperative agreement.
- B. If any funds other than federally appropriated funds have been paid or will be paid to any persons for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, CONTRACTOR shall complete and submit Standard Form -111, "Disclosure Form to Report Lobbying," in accordance with the form's instructions.



- C. CONTRACTOR shall require the language of this certification be included in the award documents for all subawards at all tiers, (including subcontracts, subgrants, and contracts under grants, loans and cooperation agreements) and that all subrecipients shall certify and disclose accordingly.
- D. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**5. MATERIALS REVIEW**

CONTRACTOR agrees that all materials, including without limitation print, audio, video, and electronic materials, developed, produced, or distributed by personnel or with funding under this Agreement shall be subject to review and approval by the Contract Administrator prior to such production, development or distribution. CONTRACTOR agrees to provide such materials sufficiently in advance of any deadlines to allow for adequate review. CITY agrees to conduct the review in a manner which does not impose unreasonable delays.

## **Appendix H**

### **HIPAA BUSINESS ASSOCIATE ADDENDUM**

This Appendix contains requirements set forth in the Health Insurance Portability and Accountability Act (HIPAA) of 1996, Public Law 104-191 and the regulations promulgated thereunder by the U.S. Department of Health and Human Services and other applicable laws. The City and County of San Francisco, referred to in this agreement as CITY, is the Covered Entity and is referred to below as CE. The CONTRACTOR is the Business Associate, and is referred to below as Associate. The agreement between CITY and CONTRACTOR to which this Addendum is attached is referred to in this Addendum as the Contract.

This HIPAA Business Associate Addendum ("Addendum") supplements and is made a part of the contract ("Contract") by and between Covered Entity ("CE") and Business Associate ("Associate"), [and is effective as of April 14, 2003 for existing contracts and the effective date for future contracts].

#### **RECITALS**

- A. CE wishes to disclose certain information to Associate pursuant to the terms of the Contract, some of which may constitute Protected Health Information ("PHI") (defined below).
- B. CE and Associate intend to protect the privacy and provide for the security of PHI disclosed to Associate pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated there under by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.
- C. As part of the HIPAA Regulations, the Privacy Rule (defined below) requires CE to enter into a contract containing specific requirements with Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.502(e) and 164.504(e) of the Code of Federal Regulations ("CFR") and contained in this Addendum.

In consideration of the mutual promises below and the exchange of information pursuant to this Addendum, the parties agree as follows:

#### **1. Definitions.**

- A. Business Associate shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 160.103.
- B. Covered Entity shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 160.103.

- C. Data Aggregation shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 164.501.
- D. Designated Record Set shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 164.501.
- E. Health Care Operations shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 164.501.
- F. Privacy Rule shall mean the HIPAA Regulation that is codified at 45 CFR Parts 160 and 164.
- G. Protected Health Information or PHI means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 164.501. [45 CFR §§ 160.103 and 164.501]
- H. Protected Information shall mean PHI provided by CE to Associate or created or received by Associate on CE's behalf.

## **2. Obligations of Associate.**

- A. Permitted Uses. Associate shall not use Protected Information except for the purpose of performing Associate's obligations under the Contract and as permitted under the Contract and Addendum. Further, Associate shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule if so used by CE except that Associate may use Protected Information (i) for the proper management and administration of Associate, (ii) to carry out the legal responsibilities of Associate, or (iii) for Data Aggregation purposes for the Health Care Operations of CE. [45 CFR §§ 164.504(e)(2)(i), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(i)]
- B. Permitted Disclosures. Associate shall not disclose Protected Information except for the purpose of performing Associate's obligations under the Contract and as permitted under the Contract and Addendum or in any manner that would constitute a violation of the Privacy Rule if disclosed by CE, except that Associate may disclose Protected Information (i) for the proper management and administration of Associate; (ii) to carry out the legal responsibilities of Associate; (iii) as required by law, or (iv) for Data Aggregation purposes for the Health Care Operations of CE.

To the extent that Associate discloses Protected Information to a third party, Associate must obtain, prior to making any such disclosure, (i) reasonable assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Addendum and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) an agreement from such third party to immediately notify Associate of any breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such breach. [45 CFR §§ 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)]

C. Appropriate Safeguards. Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by this Contract. [45 CFR § 164.504(e)(2)(ii)(B)] Associate shall maintain a comprehensive written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Associate's operations and the nature and scope of its activities.

D. Reporting of Improper Use or Disclosure. Associate shall notify the compliance office of CE in writing of any use or disclosure of Protected Information otherwise than as provided for by the Contract and this Addendum within five (5) days of becoming aware of such use or disclosure. [45 CFR § 164.504(e)(2)(ii)(C)]. Such notice shall be sent to: HSA Office of Contracts Management, 1650 Mission St, Room 300, San Francisco, CA 94103.

E. Associate's Agents. Associate shall ensure that any agents, including subcontractors, to whom it provides Protected Information, agree in writing to the same restrictions and conditions that apply to Associate with respect to such PHI. [45 CFR § 164.504(e)(2)(D)] Associate shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation. (See 45 CFR §§ 164.530(f) and 164.530(e)(1))

F. Access to Protected Information. Associate shall make Protected Information maintained by Associate or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within ten (10) days of a request by CE to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR Section 164.524. [45 CFR § 164.504(e)(2)(ii)(E)]

G. Amendment of PHI. Within ten (10) days of receipt of a request from CE for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Associate or its agents or subcontractors shall make such Protected Information available to CE for amendment and

incorporate any such amendment to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR Section 164.526. If any individual requests an amendment of Protected Information directly from Associate or its agents or subcontractors, Associate must notify CE in writing within five (5) days of the request. Any approval or denial of amendment of Protected Information maintained by Associate or its agents or subcontractors shall be the responsibility of CE. [45 CFR § 164.504(e)(2)(ii)(F)]

H. Accounting Rights. Within ten (10) days of notice by CE of a request for an accounting of disclosures of Protected Information, Associate and its agents or subcontractors shall make available to CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR Section 164.528, as determined by CE. Associate agrees to implement a process that allows for an accounting to be collected and maintained by Associate and its agents or subcontractors for at least six (6) years prior to the request, but not before the compliance date of the Privacy Rule. At a minimum, such information shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to Associate or its agents or subcontractors, Associate shall within five (5) days of a request forward it to CE in writing. It shall be CE's responsibility to prepare and deliver any such accounting requested. Associate shall not disclose any Protected Information except as set forth in Sections 2.b. of this Addendum. [45 CFR §§ 164.504(e)(2)(ii)(G) and 165.528]

I. Governmental Access to Records. Associate shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to CE and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining Associate's compliance with the Privacy Rule. [45 CFR § 164.504(e)(2)(ii)(H)] Associate shall provide to CE a copy of any Protected Information that Associate provides to the Secretary concurrently with providing such Protected Information to the Secretary.

J. Minimum Necessary. Associate (and its agents or subcontractors) shall only request, use and disclose the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure. [45 CFR § 164.514(d)(3)]

K. Data Ownership. Associate acknowledges that Associate has no ownership rights with respect to the Protected Information.

L. Retention of Protected Information. Notwithstanding Section 3.c of this Addendum, Associate and its subcontractors or agents shall retain all Protected Information throughout the term of the Contract and shall continue to maintain the information required under Section 2.h of this Addendum for a period of six (6) years after termination of the Contract. (See 45 CFR §§ 164.530(j)(2) and 164.526(d).

M. Notification of Breach. During the term of this Contract, Associate shall notify the Compliance Office of the CE within twenty-four (24) hours of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI of which Associate becomes aware and / or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

Notification can occur by telephone at: (415) 557-5000.

N. Audits, Inspection and Enforcement Involving the Use of Protected Information. Within ten (10) days of a written request by CE, Associate and its agents or subcontractors shall allow CE to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this Addendum for the purpose of determining whether Associate has complied with this Addendum; provided, however, that (i) Associate and CE shall mutually agree in advance upon the scope, timing and location of such an inspection, (ii) CE shall protect the confidentiality of all confidential and proprietary information of Associate to which CE has access during the course of such inspection; and (iii) CE shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Associate. The fact that CE inspects, or fails to inspect, or has the right to inspect, Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve Associate of its responsibility to comply with this Addendum, nor does CE's (i) failure to detect or (ii) detection, but failure to notify Associate or require Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of CE's enforcement rights under this Contract.

### **3. Termination.**

A. Material Breach. A breach by Associate of any material provision of this Addendum, as determined by CE, shall constitute a material breach of the

Contract and shall provide grounds for immediate termination of the Contract by CE pursuant to Section 20 of the Contract. [45 CFR § 164.504(e)(2)(iii)]

B. Judicial or Administrative Proceedings. CE may terminate this Contract, effective immediately, if (i) Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the Associate has violated any standard or requirement of HIPAA, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

C. Effect of Termination. Upon termination of this Contract for any reason, Associate shall, at the option of CE, return or destroy all Protected Information that Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by CE, Associate shall continue to extend the protections of Section 2 of this Addendum to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. [45 CFR § 164.504(e)(ii)(2)(I)] If CE elects destruction of the PHI, Associate shall certify in writing to CE that such PHI has been destroyed.

4. **Limitation on Liability.** Any limitations on liability set forth in the Contract shall not apply to the obligations set forth herein.
5. **Disclaimer.** CE makes no warranty or representation that compliance by Associate with this Addendum, HIPAA or the HIPAA Regulations will be adequate or satisfactory for Associate's own purposes. Associate is solely responsible for all decisions made by Associate regarding the safeguarding of PHI.
6. **Certification.** To the extent that CE determines that such examination is necessary to comply with CE's legal obligations pursuant to HIPAA relating to certification of its security practices, CE or its authorized agents or contractors, may, at CE's expense examine Associate's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to CE the extent to which Associate's security safeguards comply with HIPAA, the HIPAA Regulations or this Addendum.
7. **Amendment.** The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Contract may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the Privacy Rule and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that CE must receive satisfactory written assurance from Associate that Associate will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to

promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the Privacy Rule or other applicable laws. CE may terminate this Contract upon thirty (30) days written notice in the event (i) Associate does not promptly enter into negotiations to amend this Contract when requested by CE pursuant to this Section or (ii) Associate does not enter into an amendment to this Contract providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the Privacy Rule.

- 8. Assistance in Litigation or Administrative Proceedings.** Associate shall make itself, and any subcontractors, employees or agents assisting Associate in the performance of its obligations under this Contract, available to CE, at no cost to CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers or employees based upon a claimed violation of HIPAA, the Privacy Rule or other laws relating to security and privacy, except where Associate or its subcontractor, employee or agent is a named adverse party.
- 9. No Third Party Beneficiaries.** Nothing expressed or implied in this Contract is intended to confer, nor shall anything herein confer, upon any person other than CE, Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- 10. Effect on Contract.** Except as specifically required to implement the purposes of this Addendum, or to the extent inconsistent with this Addendum, all other terms of the Contract shall remain in force and effect.
- 11. Interpretation.** The provisions of this Addendum shall prevail over any provisions in the Contract that may conflict or appear inconsistent with any provision in this Addendum. This Addendum and the Contract shall be interpreted as broadly as necessary to implement and comply with HIPAA and the Privacy Rule. The parties agree that any ambiguity in this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the Privacy Rule.







**FY 2013-14 DAAS Meal Contract**  
**FY 2014-15 & 15-16 Contract Same as FY 13/14**

6/17/13

**ENP Congregate Meals**

Agency	Total Annual DAAS Funding	Meal Count for Appendix A	OOA Meal Rate	Total Meal Funds	Nutrition Compliance	Overall OOA Rate w/Nutrition Compliance	Total # Undup. Clients	3-Year Total DAAS \$	Comments
Bayview HPMS	\$275,713	48,240	\$5.59	\$269,663	\$6,050	\$5.72	1,500	\$827,139	
Centro Latino de SF	\$255,110	44,180	\$5.72	\$252,710	2,400	\$5.77	1,106	\$765,330	
Episcopal Comm. Services	\$131,219	22,781	\$5.76	\$131,219		\$5.76	661	\$393,657	
Glide	\$92,628	28,550	\$3.05	\$87,078	5,550	\$3.24	480	\$277,884	
Jewish Comm. Center	\$95,315	16,552	\$5.76	\$95,315		\$5.76	700	\$285,945	
Kimochi	\$364,209	63,400	\$5.68	\$360,009	\$4,200	\$5.74	1,230	\$1,092,627	
On Lok	\$465,250	81,000	\$5.66	\$458,250	\$7,000	\$5.74	2,740	\$1,395,750	
Project Open Hand	\$1,096,388	192,349	\$5.63	\$1,082,238	\$14,150	\$5.70	2,670	\$3,289,164	
Russian Amer. Comm. Svc	\$177,163	30,750	\$5.76	\$177,163		\$5.76	400	\$531,489	
Self-Help for the Elderly	\$1,028,227	181,400	\$5.61	\$1,018,377	\$9,850	\$5.67	3,200	\$3,084,681	
C.Tang	\$16,650				\$16,650			\$49,950	
Samoa Comm. Dev't Ctr	\$8,473	1,423	\$5.95	\$8,473				\$25,419	
<b>Total</b>	<b>\$4,006,345</b>	<b>710,625</b>	<b>\$5.69</b>	<b>\$3,940,495</b>	<b>\$65,850</b>		<b>14,687</b>		

**ENP Home-Delivered Meals**

Centro Latino de SF	\$158,183	24,000	\$5.43	\$130,283	\$27,900	\$6.59	124	\$474,549	
Jewish Family & Children Svc	\$50,264	7,658	\$5.45	\$41,734	\$8,530	\$6.56	43	\$150,792	
Kimochi	\$207,402	31,328	\$5.50	\$172,262	\$35,140	\$6.62	130	\$622,206	
Meals on Wheels	\$2,813,360	766,460	\$3.10	\$2,376,025	\$437,335	\$3.67	2,200	\$8,440,080	
On Lok	\$433,512	65,812	\$5.37	\$353,412	\$80,100	\$6.59	430	\$1,300,536	
Russian Amer. Comm. Svc	\$168,199	25,983	\$5.35	\$138,949	\$29,250	\$6.47	130	\$504,597	
Self-Help for the Elderly	\$357,402	53,298	\$5.45	\$290,552	\$66,850	\$6.71	310	\$1,072,206	
C.Tang	\$9,350				\$9,350			\$28,050	
<b>Total =</b>	<b>\$4,197,672</b>	<b>974,539</b>	<b>\$36</b>	<b>\$3,503,217</b>	<b>\$694,455</b>		<b>3,367</b>		

**YAD Congregate Meals**

Centro Latino de SF	\$24,596	4,300	\$5.72	\$24,596	n/a	\$5.72	153	\$73,788	
Episcopal Comm. Services	\$21,609	3,752	\$5.76	\$21,609	n/a	\$5.76	121	\$64,827	
Project Open Hand	\$6,787	1,191	\$5.70	\$6,787	n/a	\$5.70	17	\$20,361	
Russian Amer. Comm. Svc	\$4,897	850	\$5.76	\$4,897	n/a	\$5.76	10	\$14,691	
Self-Help for the Elderly	\$15,375	2,693	\$5.71	\$15,375	n/a	\$5.71	84	\$46,125	
Bayview HPMS	\$27,838	4,980	\$5.59	\$27,838	n/a	\$5.59	75	\$83,514	
<b>Total</b>	<b>\$101,102</b>	<b>17,766</b>	<b>n/a</b>	<b>\$101,102</b>	<b>n/a</b>		<b>460</b>		

**YAD-Home-Delivered Meals**

Institute on Aging	\$73,837	262			\$73,837	\$279		\$221,511	
Russian Amer. Comm. Svc	\$172,800	30,520	\$5.66	\$172,800	n/a	\$5.66	100	\$518,400	
Self-Help for the Elderly	\$186,048	33,583	\$5.54	\$186,048	n/a	\$5.54	125	\$558,144	
Meals on Wheels	\$83,290	17,797	\$4.68	\$83,290	n/a	\$4.68	70	\$249,870	
<b>Total</b>	<b>\$515,975</b>	<b>81,900</b>	<b>n/a</b>	<b>\$442,138</b>	<b>\$73,837</b>		<b>295</b>		

**TOTAL All Programs**      **\$8,821,094**      **1,784,830**      **\$7,986,952**      **\$834,142**      **18,809**

**Available Funds:**      **\$8,813,436**

**Variance**      **-\$7,658**      Note: To be balanced with savings during the year or with any Add Back Funds

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

**GRANT AGREEMENT**

between

CITY AND COUNTY OF SAN FRANCISCO

and

**INSTITUTE ON AGING**

**THIS GRANT AGREEMENT** (this “Agreement”) is made this **1<sup>st</sup>** day of **July**, 2013, in the City and County of San Francisco, State of California, by and between **Institute on Aging, 3575 Geary Blvd, San Francisco, CA 94118** (“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) seeking a grant, for the purpose of funding the matters set forth in the Grant Plan (as hereinafter defined); and summarized briefly as follows:

**INTAKE ASSESSMENTS FOR YOUNGER ADULTS WITH DISABILITIES – HOME-DELIVERED MEALS PROGRAM; and**

**WHEREAS**, approval for said Agreement was obtained when the Civil Service Commission approved Grant Number **4082-10/11** on **March 7, 2011**; and

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

**NOW, THEREFORE**, in consideration of the promises 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.
- (c) “**Application Documents**” shall mean collectively: (i) the grant application submitted by Grantee, including all exhibits, schedules, appendices and attachments thereto; (ii) all documents, 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
- (n) “**HRC**” shall mean the Human Rights Commission of 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.

**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 “subgrantee,” “successor” or “assign” herein refers only to a subgrantee (“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 21.10-1 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, 2013 and (b) the effective date specified in Section 3.1. Such term shall end at 11:59 p.m. San Francisco time on JUNE 30, 2016.

Grant term can be extended at the sole discretion of the Department for one (1) additional year, subject to the performance of the Grantee and the availability of funding.

### **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 subgrantees 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.** In no event shall the amount of Grant Funds disbursed hereunder exceed **TWO HUNDRED TWENTY ONE THOUSAND FIVE HUNDRED ELEVEN DOLLARS (\$221,511.00)**.

**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 OMB Circular A-122, 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 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 Disallowance and Single Audit Requirements:** If Grantee claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States 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. 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. Single Audit Requirements: Grantees that expend \$500,000 or more in a year from any and all Federal awards shall have a single audit conducted in accordance with OMB Circular A-133. Grantees that expend less than \$500,000 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.

**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 OMB Circular A-133, 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, 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.** Pursuant to San Francisco Administrative Code §21.35, any grantee, subgrantee or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. A grantee, subgrantee or consultant will be deemed to have submitted a false claim to the City if the grantee, subgrantee 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.** Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

- (a) Grantee shall provide EIC Forms to each Eligible Employee at each of the following times:
  - (i) within thirty (30) days following the date on which this Agreement becomes effective (unless Grantee has already provided such EIC Forms at least once during the calendar year in which such effective date falls);
  - (ii) promptly after any Eligible Employee is hired by Grantee; and
  - (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.
- (b) Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Grantee of the terms of this Agreement. If, within thirty (30) days after Grantee receives written notice of such a breach, Grantee fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Grantee fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.
- (c) Any Subgrant entered into by Grantee shall require the subgrantee to comply, as to the subgrantee's Eligible Employees, with each of the terms of this section.
- (d) Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

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

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

**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.

**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.

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

**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.

**ARTICLE 13  
ASSIGNMENTS AND SUBGRANTING**

**13.1 No Assignment by Grantee.** Grantee shall not, either directly or indirectly, assign, transfer, hypothecate, subgrant 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 Subgranting.** If Appendix E lists any permitted subgrantees, then notwithstanding any other provision of this Agreement to the contrary, Grantee shall have the right to subgrant 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 subgrant or delegate the whole of the Grant Plan. Grantee may subgrant 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 subgrantee 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 subgranted 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 subgrantee 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 Subgrant.** Each subgrant 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 subgrant shall incorporate all of the terms of this Agreement, insofar as they apply to the subgranted portion of the Grant Plan. Without limiting the scope of the foregoing, each subgrant 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 subgrant 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 GRANTEE 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 Grant Management  
P.O. Box 7988  
San Francisco, CA 94120-7988  
Facsimile No. 415-557-5679

If to Grantee:

**INSTITUTE ON AGING**  
**3575 GEARY BLVD**  
**SAN FRANCISCO, CA 94118**  
**ATTN: J. THOMAS BRIODY**  
**FACSIMILE NO. (415) 750-5332**  
**EMAIL: [TBRIODY@IOAGING.ORG](mailto:TBRIODY@IOAGING.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 Left Blank by Agreement of the Parties**

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.** As a condition to this Agreement, Grantee shall execute the "Chapter 12B Declaration: Nondiscrimination in Grants and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.
- (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 require 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. Grantee 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 Grantee's obligations under the MCO is set forth in this Section. Grantee is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.
- b. The MCO requires Grantee to pay Grantee'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 Grantee is obligated to keep informed of the then-current requirements. Any subgrant entered into by Grantee

shall require the subgrantee 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 Grantee's obligation to ensure that any subgrantees of any tier under this Agreement comply with the requirements of the MCO. If any subgrantee under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Grantee.

- c. Grantee 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. Grantee shall maintain employee and payroll records as required by the MCO. If Grantee fails to do so, it shall be presumed that the Grantee paid no more than the minimum wage required under State law.
- e. The City is authorized to inspect Grantee's job sites and conduct interviews with employees and conduct audits of Grantee
- f. Grantee'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 Grantee fails to comply with these requirements. Grantee agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Grantee's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.
- g. Grantee 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, Grantee fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Grantee fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, 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. Grantee represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.
- i. If Grantee is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Grantee later enters into an agreement or agreements that cause grantee to exceed that amount in a fiscal year, Grantee shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Grantee and this department to exceed \$25,000 in the fiscal year.

#### **16.9. Requiring Health Benefits for Covered Employees**

Grantee agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time



to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

- a. For each Covered Employee, Grantee shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Grantee chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.
- b. Notwithstanding the above, if the Grantee is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.
- c. Grantee's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Grantee if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Grantee fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Grantee fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.
- d. Any Subgrant entered into by Grantee shall require the Subgrantee to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Grantee shall notify City's Office of Grant Administration when it enters into such a Subgrant and shall certify to the Office of Grant Administration that it has notified the Subgrantee of the obligations under the HCAO and has imposed the requirements of the HCAO on Subgrantee through the Subgrant. Each Grantee shall be responsible for its Subgrantees' compliance with this Chapter. If a Subgrantee fails to comply, the City may pursue the remedies set forth in this Section against Grantee based on the Subgrantee's failure to comply, provided that City has first provided Grantee with notice and an opportunity to obtain a cure of the violation.
- e. Grantee shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Grantee's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.
- f. Grantee represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.
- g. Grantee shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Grant.
- h. Grantee shall keep itself informed of the current requirements of the HCAO.
- i. Grantee shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subgrantees and Subtenants, as applicable.
- j. Grantee shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

- k. Grantee shall allow City to inspect Grantee's job sites and have access to Grantee's employees in order to monitor and determine compliance with HCAO.
- l. City may conduct random audits of Grantee to ascertain its compliance with HCAO. Grantee agrees to cooperate with City when it conducts such audits.
- m. If Grantee is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Grantee later enters into an agreement or agreements that cause Grantee's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Grantee and the City to be equal to or greater than \$75,000 in the fiscal year.

**16.10 Limitations on Contributions.** Through execution of this Agreement, Grantee acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who 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. Grantee 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. Grantee further acknowledges that the prohibition on contributions applies to each prospective party to the grant; each member of Grantee's board of directors; Grantee's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Grantee; any subgrantee listed in the bid or grant; and any committee that is sponsored or controlled by Grantee. Additionally, Grantee acknowledges that Grantee must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

**16.11 First Source Hiring Program.**

- a. **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Grantee shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.
- b. **First Source Hiring Agreement.** As an essential term of, and consideration for, any grant or property grant with the City, not exempted by the FSHA, the Grantee shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the grant or property grant. Grantees shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:
  - (1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's

participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs may be certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

- (2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.
- (3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term 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 this Chapter. 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 this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

- (6) Set the term of the requirements.
  - (7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.
  - (8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.
  - (9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy grants.
- c. Hiring Decisions.** Grantee shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.
- d. Exceptions.** Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.
- e. Liquidated Damages.** Grantee agrees:
- (1) To be liable to the City for liquidated damages as provided in this section;
  - (2) To be subject to the procedures governing enforcement of breaches of grants based on violations of grant provisions required by this Chapter as set forth in this section;
  - (3) That the grantee's commitment to comply with this Chapter is a material element of the City's consideration for this grant; that the failure of the grantee to comply with the grant provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the grantee from the first source hiring process, as determined by the FSHA during its first investigation of a grantee, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the grantee's failure to comply with its first source referral contractual obligations.
  - (4) That the continued failure by a grantee 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 grantee'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 grantee to comply with its first source referral contractual obligations.

(6) That the failure of grantees to comply with this Chapter, except property grantees, 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. Subgrants.** Any subgrant entered into by Grantee shall require the subgrantee to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

**16.12 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.

**16.13 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.

**16.14 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.

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

**16.16 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.

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

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

**16.18 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.

**16.19 Slavery Era Disclosure. Left Blank by Agreement of the Parties**

**16.20 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.

**16.21. 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.

**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, Site Chart**
- Appendix G – Additional Terms**
- Appendix G – HIPAA 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 Subgrantees

None

**APPENDIX A –SERVICES TO BE PROVIDED BY GRANTEE  
INSTITUTE ON AGING**

**EFFECTIVE JULY 1, 2014 TO JUNE 30, 2017**

**CITYWIDE INFORMATION AND ASSISTANCE (I & A) SPECIALIST SUPERVISOR**

**I. Purpose**

The purpose of this grant is to improve the knowledge, skills, and performance of Information and Assistance (I & A) specialists working with seniors and adults with disabilities; and to maintain agency excellence in the provision of information and assistance services. The primary focus of this service model is to provide support for individual I & A specialists to improve the services delivered to their clients, to provide professional growth for individual I & A specialists and to help deter staff burnout. The citywide I & A supervisor provides such a resource by bringing together I & A specialists from a variety of agencies for group and individual supervision meetings and administrative trainings. In general, the supervisor provides more focused and advanced trainings and supervision opportunities than can often be provided by most community organizations. The supervisor will also be responsible for managing and supervising outreach activities.

**II. Definitions**

HSA	Human Services Agency of City and County of San Francisco
DAAS	Department of Aging and Adult Services
Senior	Person who is 60 years or older.
Adult with Disability	Person 18 years of age or older living with a disability.
ADRC	An Aging and Disability Resource Center (ADRC) specializes in information from a broad perspective, referral between a wide array of organizations and public awareness of long term service and support (LTSS) options. To fulfill this function, ADRC locations are where people of all ages, disabilities, and income levels know they will receive objective and unbiased information on the full range of LTSS options.

**III. Target Population**

The intended recipients of the services provided by the citywide I & A specialist supervisor are DAAS funded community I & A specialists working with seniors and adults with disabilities.

**IV. Eligibility for I & A specialist supervision services**

DAAS funded I & A specialists working with seniors and adults with disabilities are eligible for I & A specialist supervision services.

**V. Location and Time of Services**

Group and Individual supervision, and didactic trainings, will be delivered at each ADRC. Exact schedule and location will be determined in conjunction with the I & A specialists and their supervisors.

The supervisor will work with I & A staff on offering information and referral, assistance, and follow up services in accordance with statewide and national standards. A specialist supervisor is available to meet in a large group format and on an individual basis with I & A specialist staff. The specifics of either supervision model is worked out with each specific agency. This flexibility allows for the service model to respond to the culture of each organization.

**VI. Description of Services**

**A. Background**

The model of contracting directly with I & A hubs throughout the city is similar to an existing relationship with DAAS funded case management agencies. DAAS funds a case management collaborate supervisor who does clinical supervision for case managers at various agencies. This involves sharing supervisory duties. This clinical supervision role is helpful because agencies benefit from this added clinically focused supervision outside their agencies. Similarly, agencies that employ I & A staff will benefit from an offsite supervisor that can provide one-on-one and group supervision, focused strictly on I & A standards.

**B. Responsibilities**

The Grantee shall provide individual and group administrative supervision, didactic clinical and administrative training, chart and documentation review, and an opportunity for professional networking/resource sharing. The Grantee shall be responsible for arranging for and identifying necessary outreach efforts to promote significant utilization of ADRCs in neighborhoods throughout the City, advertising Information and Assistance services in coordination with I & A specialists. The Supervisor shall monitor the effectiveness of services at each outstation (e.g., conducting timely follow up activities, appropriateness of referrals, adequate service levels), providing feedback to the DAAS contract monitor as needed. The Grantee shall be the lead in representing ADRC centers for the Aging and Disability Resource Connection (ADRC). As the lead, the Grantee shall attend ADRCConnection meetings and participate in any future ADRCConnection related projects. The Connection is a “no wrong door” model for consumers to access long term care services and supports. It is a partnership between DAAS, the Independent Living Center and the outstationed resource centers.

The Citywide I & A Supervision Collaborative includes at a minimum the following:

- Minimum of monthly group supervision for all I & A specialists. Group meetings provide case consultation, topic specific training, and review of core tasks and standards of I & A concepts. With an orientation in I & A core concepts, group supervision and training aims to improve the I & A specialists’ general performance as well as their ability to work with clients (e.g., recognizing case management and other social service needs of clients and the need for follow-up with clients). For group supervision, the I & A Specialist Supervisor also brings in outside experts and trainers to expand knowledge of resources, geriatric and disability related topics, clinical skills with a focus on knowledge of resources, assessment,

conducting effective follow-ups, and managing challenging client issues. An added benefit of the group supervision context is the camaraderie that develops between participants encouraging resource sharing, cross agency referrals, and peer review and guidance.

- Deliver weekly individual and Administrative supervision to I & A specialists. Individual supervision sessions emphasize specific I & A specialist performance issues, challenging client issues and offers guidance for maintaining quality I & A services. In addition, individual supervision provides a forum to address and improve charting and documentation issues.
- Meet with I & A supervisors on a quarterly basis to ensure coordination between the Citywide I & A specialist supervisor and the day to day I & A supervisors in order to make programs more effective and avoid any problems of “dual supervision.”
- Develop and maintain outreach plan and materials for I & A specialist collaborative. The plan will identify targets for increased utilization of ADRC services in historically underserved neighborhoods, as identified by prior year contract reporting from DAAS. In order to reach those targets, the plan will, at a minimum, develop and identify outreach events in conjunction with other ADRC partners, updating outreach events monthly. Arrange for the execution of outreach events, providing outreach through presentations and fairs, and partnering with I & A staff and/or DAAS to staff events.

## **VII. Service Objectives**

### **Outreach Activities**

The I & A specialist supervisor should establish and maintain strong visibility of I & A services in the city through an outreach plan that includes the following:

The I & A specialist supervisor will compile publish an outreach calendar monthly that includes outreach fairs and presentations, getting input from all outstations.

The I & A specialist supervisor will monitor each outstation’s service units monthly to identify where outreach is needed.

The I & A specialist supervisor will coordinate and/or execute outreach events. This should include a minimum of one presentation and one fair monthly. The supervisor will either attend or have an I & A worker from the outstations attend these events.

### **Group Supervision**

The I & A specialist supervisor must provide a support network for I & A specialists to enhance professional growth and deter burnout. The supervisor must build collaborative networks between I & A providers.

I & A specialist collaborative: Group Supervision meetings one time per month (minimum 12 per year)

### **Individual Supervision**

Each member of the collaborative will have access to individual and small-group clinical and administrative supervision at least once per week or as needed. In individual supervision, emphasize core elements of I & A services such as Information and referral, Assistance and Follow-up. Improve knowledge, skills and abilities of I & A specialists regarding I & A service. Improve the quality of client and I & A specialist relationship by focusing on core I & A elements.



**Meetings with participating agency supervisors and directors**

The I & A specialist supervisor will meet on a monthly basis with all OOA agency supervisors (minimum 12 per year)

**Meetings with ADRC partners**

The I & A specialist supervisor will meet on a monthly basis with all ADRC (minimum 12 per year) and with the contract monitor as needed.

**VIII. Outcome Objectives**

Outcome objectives are subject to change as the service delivery model is established and/or modified.

- At least 85% of I & A specialists in the group responding to a satisfaction survey will be satisfied with the service and find the service beneficial. The satisfaction survey will be administered by the DAAS contract monitor during a group meeting or via email.
- At least 85% of I & A day-to-day supervisors in the group responding to a satisfaction survey will respond that this program helped improve service delivery to clients at their agency. The satisfaction survey will be administered by the DAAS contract monitor during a group meeting or via email.
- Achieve 100% of the service level targets of the outreach plan.

**IX. Monitoring Activities**

- A. Program Monitoring: Program monitoring will include review of compliance to specific program standards or requirements; client eligibility and targeted mandates, back up documentation for the units of service and all reporting, and progress of service and outcome objectives; how participant records are collected and maintained; reporting performance including monthly service unit reports on ir2.sfgetcare.com, maintenance of service unit logs; agency and organization standards, which include current organizational chart, evidence of provision of training to staff regarding the Elder Abuse Reporting; program operation, which includes a review of a written policies and procedures manual of all OOA funded programs, written project income policies if applicable, grievance procedure posted in the center/office, and also given to the consumers who are homebound, hours of operation are current according to the site chart; a board of director list and whether services are provided appropriately according to Sections VI and VII.
- 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, the current board roster and selected board minutes for compliance with the Sunshine Ordinance, and HIPAA compliance.

**X. Reporting and Other Requirements**

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

- A. Outreach plan, including outreach calendar and events or presentations that supervisor or I & A specialists attend, submitted monthly to DAAS contract monitor.
- B. Grantee shall submit Community Services Block Grant (CSBG) time study to HSA/DAAS for the months of February, May, August and November. The time study is due on the 10<sup>th</sup> day following the time study month and shall be sent via email to [csbgtimestudies@sfgov.org](mailto:csbgtimestudies@sfgov.org).
- C. Grantee shall issue a Fiscal Closeout Report at the end of the fiscal year. The report is due to HSA no later than July 31 each grant year.
- D. Grantee shall develop and deliver ad hoc reports as requested by HSA.
- E. Grantee is required to attend all mandatory case management training or other training as needed.
- F. Apart from reports requested to be sent via e-mail to the Program Analyst and/or Contract Manager, all other reports should be sent to the following addresses:

Jason Adamek, DAAS Intake Services Manager  
Department of Aging and Adult Services  
PO Box 7988  
San Francisco, CA 94120

Email address: [jason.adamek@sfgov.org](mailto:jason.adamek@sfgov.org),

Tahir Shaikh, Contract Manager  
Human Services Agency  
PO Box 7988  
San Francisco, CA 94120

Email address: [Tahir.Shaikh@sfgov.org](mailto:Tahir.Shaikh@sfgov.org),

**HUMAN SERVICES AGENCY CONTRACT BUDGET SUMMARY  
 BY PROGRAM**

Contractor's Name Institute on Aging	Contract Term 7/1/14-6/30/17
---	---------------------------------

(Check One) New  Renewal \_\_\_\_\_ Modification \_\_\_\_\_  
 If modification No. of Mod. \_\_\_\_\_

Program: <b>Citiwide Information and Assistance Specialist Supervisor</b>				
Budget Reference Page No.(s)				Total
Program Term	7/1/14-6/30/15	7/1/15-6/30/16	7/1/16-6/30/17	7/1/14-6/30/17
<b>Expenditures</b>				
Salaries & Benefits	\$83,005	\$83,005	\$83,005	\$249,015
Operating Expense	\$9,750	\$9,750	\$9,750	\$29,250
<b>Subtotal</b>	\$92,755	\$92,755	\$92,755	\$278,265
Indirect Percentage (%)	15%	15%	15%	15%
Indirect Cost (Line 16 X Line 17)	\$13,913	\$13,913	\$13,913	\$41,739
Capital Expenditure	\$1,700	\$0	\$0	\$1,700
Total Expenditures	\$108,368	\$106,668	\$106,668	\$321,704
<b>HSA Revenues</b>				
General Fund	\$108,368	\$106,668	\$106,668	\$321,704
<b>TOTAL HSA REVENUES</b>	\$108,368	\$106,668	\$106,668	\$321,704
<b>Other Revenues</b>				
Project Income				
In-Kind				
Fund-Raising				
Contributions/Grants				
IOA Subsidy				
Total Revenues	\$108,368	\$106,668	\$106,668	\$321,704
Full Time Equivalent (FTE)				

Prepared by: Yvette Koth Telephone No.: 415-750-4139 Date 4/1/2014

HSA-CO Review Signature: \_\_\_\_\_

## Appendix C – Method of Payment

- I. In accordance with Section 5 of the Grant Agreement, payments shall be made for actual costs incurred and reported for each month. Under no circumstances shall payment exceed the amount set forth in Section 5 Compensation of the Agreement.
- II. Grantee will submit all bills, invoices and related documentation in the format specified by SFHSA within 15 days after the month of service to SFHSA's web-based Contracts Administration, Reporting, and Billing Online (CARBON) System at: <https://contracts.sfhsa.org>  
  
Grantee may submit bills, invoices and related documentation in the format specified by SFHSA via paper or email only upon special permission by their assigned Contract Manager.
- III. Grantee must sign up to receive payments electronically via Automated Clearing House (ACH). Remittance information will be provided through Paymode-X. Additional information and sign up is available at: <http://www.sfgov.org/ach>
- IV. The Executive Director or CFO must submit a letter of authorization designating specific users who will have access to CARBON to electronically submit and sign for invoices, budget revision requests, program reports, and view other information that is in CARBON.
  - A. Submittal of the invoice by designated authorized personnel with proper login credentials constitutes an electronic signature and certification of the invoice.
  - B. Authorized personnel with CARBON login credentials shall not share or internally reassign logins.
  - C. Grantee shall notify SFHSA Contract Manager immediately regarding any need for the restriction or termination of a previously authorized CARBON login.
- V. Invoices shall include actual expenditures incurred during the month, unless otherwise specified.
  - A. The invoice supplied shall include the total dollar amount claimed for the month.
  - B. There shall be no variance from the line item budget submitted which adversely affects program performance as contained in the Grantee's proposal and specified in the grant.
  - C. The invoice shall show by line item:
    1. Budgeted amount (per approved grant budget or modification)
    2. Expenses for invoice period
    3. Expenses year-to-date
    4. % of budget expended
    5. Remaining balance
    6. Adjustments, including advance payment recovery
    7. Program income when specified in the grant agreement.
  - D. Personnel expenditures will show same line item categories by position detail. Detail will show name of employee, position name, %FTE and budgeted salary.
  - E. With written approval from SFHSA Program/Contract Manager, Grantee may adjust items within the existing budget of the grant in accordance with SFHSA Office of Contract Management Policy for Budget Line Item Revisions.
  - F. Supporting Documentation, except as discussed below need not be submitted with the invoice. However, Grantee must keep and make available as requested such supporting documentation for all expenditures for which reimbursement is requested for all costs so claimed. All charges incurred shall be due and payable only after services have been rendered, except as stated otherwise. Supporting documentation must be uploaded into CARBON and submitted along with the invoice.

- Documentation should be submitted with the invoice for all payroll expenses paid to budgeted personnel for the period covered by the invoice. Payroll information can be from a payroll service or a payroll ledger from the Grantee's accounting system
- For any and all non-recurring expenditures (e.g. equipment purchases/capital upgrades and building repair and upgrades) and/or items that exceed \$5,000, Grantee shall supply back-up documentation in the form of a paid invoice(s).
- Indirect costs shall not be applied to non-reoccurring expenses.
- All subcontracted services must be documented by submission of the subcontractor's paid invoice, regardless of dollar amount.
- If this grant agreement contains any Pass-Through funding requiring specific expense documentation from the source agency, Federal, State, Private or other then the following documentation shall also be included with each invoice submission:

Funding Agency: \_\_\_\_\_ CFDA or other Identification #: \_\_\_\_\_

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

- VI. Following SFHSA verification of submitted Invoice with required documentation of incurred expenses via CARBON, SFHSA will authorize payment within 10 business days after receipt of the invoice.
- VII. Within 45 days after the end of the grant period, Grantee shall submit a final report reflecting actual expenditures, which will be supported by the Grantee's accounting records. If a refund is due SFHSA, it will be submitted with the final report.
- VIII. Advances or prepayments are allowable in order to meet the Grantee cash flow needs in certain unique circumstances. The Agency, at its sole discretion, shall make available to the Grantee upon written request an advance amount not to exceed two (2) months or 1/6<sup>th</sup> of the total annualized grant award, or as mutually agreed upon. The advanced sum shall be deducted from the Grantee's monthly invoices at an equal rate each month that will enable repayment by the tenth month of the fiscal year. For a twelve-month grant the rate of repayment of the advance will be 1/10<sup>th</sup> per month from July to April. Requests for advance payment will be granted on a case-by-case basis and are not intended to be a regular "automatic" procedure. Approval will be a consensus of Program and Contract Staff.

Once the grant is certified, the Grantee, prior to distribution of any advanced payment, must fulfill the following conditions:

- 1. All contractual compliance requirements must be current, i.e., reports submitted and approved, corrective actions resolved, business tax and insurance certificates in place, prompt and fully documented billings.

2. The Grantee shall submit a written request with a narrative justification that fully describes the unique circumstances to the Program Manager and Contract Manager for review and approval.
  3. Final invoice from the preceding fiscal year must be received prior to advance distribution.
- IX. Timely Submission of Reports – If reports/documents are required, Grantee shall submit these reports prior to submitting invoices. Failure to submit required reports/documents in CARBON by specified deadlines may result in withholding of grant payments.

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

**GRANT AGREEMENT**

between

CITY AND COUNTY OF SAN FRANCISCO

and

**INSTITUTE ON AGING**

**THIS GRANT AGREEMENT** (this “Agreement”) is made this **1<sup>st</sup>** day of **July**, 2014, in the City and County of San Francisco, State of California, by and between **Institute on Aging, 3575 Geary Blvd, San Francisco, CA 94118** (“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) seeking a grant, for the purpose of funding the matters set forth in the Grant Plan (as hereinafter defined); and summarized briefly as follows:

**To provide Citywide Information and Assistance (I&A) Specialist Supervisor;** and

**WHEREAS**, the Grant is funded with Federal dollars, CFDA #93.041; and

**WHEREAS**, approval for said Agreement was obtained when the Civil Service Commission approved Grant Number **4081-10/11** on **March 7, 2011**; and

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

**NOW, THEREFORE**, in consideration of the promises 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.

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

(n) “**HRC**” shall mean the Human Rights Commission of 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.

**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 “subgrantee,” “successor” or “assign” herein refers only to a subgrantee (“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 21.10-1 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, 2014** 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, 2015**.

### **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 subgrantees 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 **Three Hundred Twenty One Thousand, Seven Hundred Four** Dollars (\$**321,704**) for the period **from July 1, 2014 to June 30, 2017, plus any contingent amount authorized by City and certified as available by the Controller.**

**Contingent amount:** Up to **Thirty Two Thousand, One Hundred Seventy** Dollars (\$**32,170**) for the period from **July 1, 2014 to June 30, 2017 (Y1), may be available, in the City's sole discretion, as a contingency subject to authorization by the City and certified as available by the Controller.**

The maximum amount of Grant Funds disbursed hereunder shall not exceed **Three Hundred Fifty Three Thousand, Eight Hundred Seventy Four** Dollars (\$**353,874**) for the period from **July 1, 2014 to June 30, 2017 (Y1).**

Grantee understands that, of the maximum dollar disbursement listed in Section 5.1 of this Agreement, **the amount shown as the Contingent Amount may not be used in Program Budgets attached to this Agreement as Appendix B, and is not available to Grantee without a revision to the Program Budgets of Appendix B specifically approved by Grant Agreement Administrator.** Grantee further understands that no payment of any portion of this contingency amount will be made unless and until such funds are certified as available by Controller. Grantee agrees to fully comply with these laws, regulations, and policies/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 OMB Circular A-122, 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 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 Disallowance and Single Audit Requirements:** If Grantee claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States 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. 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. Single Audit Requirements: Grantees that

expend \$500,000 or more in a year from any and all Federal awards shall have a single audit conducted in accordance with OMB Circular A-133. Grantees that expend less than \$500,000 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.

## **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 OMB Circular A-133, 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, 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.** Pursuant to San Francisco Administrative Code §21.35, any grantee, subgrantee or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. A grantee, subgrantee or consultant will be deemed to have submitted a false claim to the City if the grantee, subgrantee 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.** Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

(a) Grantee shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty (30) days following the date on which this Agreement becomes effective (unless Grantee has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Grantee; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

(b) Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Grantee of the terms of this Agreement. If, within thirty (30) days after Grantee receives written notice of such a breach, Grantee fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Grantee fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

(c) Any Subgrant entered into by Grantee shall require the subgrantee to comply, as to the subgrantee's Eligible Employees, with each of the terms of this section.

(d) Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

## **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 Subgrants.** 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 and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Grantee or loss of or damage to property, arising directly or indirectly from Grantee's performance of this Agreement, including, but not limited to, Grantee's use of facilities or equipment provided by City or others,



regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Grantee, its subcontractors or either's agent or employee. 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. In addition to Grantee's obligation to indemnify City, Grantee specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Grantee by City and continues at all times thereafter. Grantee shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement. Grantee shall also indemnify, defend, and hold City harmless from all suits or claims or administrative proceedings for breaches of federal and/or state law regarding the privacy of personally identifying information, personal health information, electronic records, or related topics, arising directly or indirectly from Grantee's performance of this Agreement, except where such breach is the result of the active negligence or willful misconduct of 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.
- (c) Commercial Automobile Liability Insurance with limits not less than one million dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- (d) Professional liability insurance for negligent acts, errors or omission with respect to professional or technical services, if any, required in the performance of this Agreement with limits not less than one million dollars (\$1,000,000) each claim.

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

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

(e) **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.

(f) **Cross Default.** Grantee defaults under any other agreement between Grantee and City (after expiration of any grace period expressly stated in such agreement).

(g) **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.

(h) **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.

## 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 this Chapter 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 subcontractors, and all agents and employees of Contractor and any subcontractor 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 subcontractors 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.

## **ARTICLE 13 ASSIGNMENTS AND SUBGRANTING**

**13.1 No Assignment by Grantee.** Grantee shall not, either directly or indirectly, assign, transfer, hypothecate, subgrant 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 Subgranting.** If Appendix E lists any permitted subgrantees, then notwithstanding any other provision of this Agreement to the contrary, Grantee shall have the right to subgrant 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 subgrant or delegate the whole of the Grant Plan. Grantee may subgrant 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 subgrantee 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 subgranted 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 subgrantee 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 Subgrant.** Each subgrant 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 subgrant shall incorporate all of the terms of this Agreement, insofar as they apply to the subgranted portion of the Grant Plan. Without limiting the scope of the foregoing, each subgrant shall provide City, with respect to the s 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 subgrant 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 GRANTEE 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 Grant Management  
P.O. Box 7988  
San Francisco, CA 94120-7988  
Facsimile No. 415-557-5679

If to Grantee: Institute on Aging  
3330 Geary Blvd, 2<sup>nd</sup> Floor  
San Francisco, CA 94118  
Attn: J. Thomas Briody  
Facsimile No. (415) 750-4179  
Email: tbriody@ioaging.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 Left Blank by Agreement of the Parties

### 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.** As a condition to this Agreement, Grantee shall execute the “Chapter 12B Declaration: Nondiscrimination in Grants and Benefits” form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

(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 require 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. Grantee 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 Grantee's obligations under the MCO is set forth in this Section. Grantee is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Grantee to pay Grantee'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 Grantee is obligated to keep informed of the then-current requirements. Any subgrant entered into by Grantee shall require the subgrantee 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 Grantee's obligation to ensure that any subgrantees of any tier under this Agreement comply with the requirements of the MCO. If any subgrantee under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Grantee.

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

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

f. Grantee'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 Grantee fails to comply with these requirements. Grantee agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Grantee's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Grantee 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, Grantee fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Grantee fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, 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. Grantee represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

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

### **16.9. Requiring Health Benefits for Covered Employees**

Grantee agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Grantee shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Grantee chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Grantee is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Grantee's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Grantee if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Grantee fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Grantee fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each

of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subgrant entered into by Grantee shall require the Subgrantee to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Grantee shall notify City's Office of Grant Administration when it enters into such a Subgrant and shall certify to the Office of Grant Administration that it has notified the Subgrantee of the obligations under the HCAO and has imposed the requirements of the HCAO on Subgrantee through the Subgrant. Each Grantee shall be responsible for its Subgrantees' compliance with this Chapter. If a Subgrantee fails to comply, the City may pursue the remedies set forth in this Section against Grantee based on the Subgrantee's failure to comply, provided that City has first provided Grantee with notice and an opportunity to obtain a cure of the violation.

e. Grantee shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Grantee's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

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

g. Grantee shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Grant.

h. Grantee shall keep itself informed of the current requirements of the HCAO.

i. Grantee shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subgrantees and Subtenants, as applicable.

j. Grantee shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Grantee shall allow City to inspect Grantee's job sites and have access to Grantee's employees in order to monitor and determine compliance with HCAO.

l. City may conduct random audits of Grantee to ascertain its compliance with HCAO. Grantee agrees to cooperate with City when it conducts such audits.

m. If Grantee is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Grantee later enters into an agreement or agreements that cause Grantee's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Grantee and the City to be equal to or greater than \$75,000 in the fiscal year.

**16.10 Limitations on Contributions.** Through execution of this Agreement, Grantee acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who 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. Grantee 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. Grantee further acknowledges that the prohibition on contributions applies to each prospective party to the grant; each member of Grantee's board of directors; Grantee's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Grantee; any subgrantee listed in the bid or grant; and any committee that is sponsored or controlled by Grantee. Additionally, Grantee acknowledges that Grantee must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

#### **16.11 First Source Hiring Program.**

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

**b. First Source Hiring Agreement.** As an essential term of, and consideration for, any grant or property grant with the City, not exempted by the FSHA, the Grantee shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the grant or property grant. Grantees shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

(1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

(2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

(3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating

employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term 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 this Chapter. 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 this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

(6) Set the term of the requirements.

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

(8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

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

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

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

**e. Liquidated Damages.** Grantee agrees:

(1) To be liable to the City for liquidated damages as provided in this section;

(2) To be subject to the procedures governing enforcement of breaches of grants based on violations of grant provisions required by this Chapter as set forth in this section;

(3) That the grantee's commitment to comply with this Chapter is a material element of the City's consideration for this grant; that the failure of the grantee to comply with the grant provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the grantee from the first source hiring process, as determined by the FSHA during its first investigation of a grantee, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the grantee's failure to comply with its first source referral contractual obligations.

(4) That the continued failure by a grantee 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 grantee'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 grantee to comply with its first source referral contractual obligations.

(6) That the failure of grantees to comply with this Chapter, except property grantees, 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. Subgrants.** Any subgrant entered into by Grantee shall require the subgrantee to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.



**16.12 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.

**16.13 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.

**16.14 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.

## **16.15 Reserved.**

**16.16 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.

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

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

**16.18 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.

**16.19 Slavery Era Disclosure. Left Blank by Agreement of the Parties**

**16.20 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.

**16.21. 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.

**16.22 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, HIPAA 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 Subgrantees**

**None**



**Appendix F**  
**Additional Terms**  
**Healthcare Insurance Portability and Accountability Act of 1996 ("HIPAA")**

**1. HIPAA**

The parties acknowledge that CITY is a Covered Entity as defined in the Healthcare Insurance Portability and Accountability Act of 1996 ("HIPAA") and is therefore required to abide by the Privacy Rule contained therein. The parties further agree that CONTRACTOR falls within the following definition under the HIPAA regulations:

- A Covered Entity subject to HIPAA and the Privacy Rule contained therein; or
- A Business Associate subject to the terms set forth in Appendix E;
- Not Applicable, CONTRACTOR will not have access to Protected Health Information.

**2. HUMAN SERVICES AGENCY PRIVACY AND DATA SECURITY POLICIES**

- A. The Human Services Agency (HSA) has developed Privacy and Data Security Policies that encompass all federal and state confidentiality and data security regulations, including HIPAA and local policies.

CONTRACTORS agree to abide by the HSA Privacy and Data Security Policies, unless otherwise granted a waiver from certain policies by HSA, and will be monitored and evaluated on the following criteria:

- B. HSA Privacy Policy is integrated in the program's governing policies and procedures regarding patient privacy and confidentiality.

As Measured by: Evidence that the policy and procedures that abides by the rules outlined in the HSA Privacy Policy have been adopted, approved and implemented.

- C. All staff that handles patient health information are trained (including new hires) and annually updated in the program's privacy/confidentiality policies and procedures.

As Measured by: Documentation exists showing individuals were trained.

- D. A Privacy Notice that meets the requirements of the Federal Privacy Rule (HIPAA) is written and provided to all patients/clients served in their threshold and other languages. If document is not available in the patient's/client's relevant language, verbal translation is provided.

As Measured by: Evidence in patient's/client's chart or electronic file that patient was "noticed." (Examples in English, Cantonese, Vietnamese, Tagalog, Spanish, Russian will be provided.)

- E. A Summary of the above Privacy Notice is posted and visible in registration and common areas of treatment facility.

As Measured by: Presence and visibility of posting in said areas. (Examples in English, Cantonese, Vietnamese, Tagalog, Spanish, Russian will be provided.)

- F. Each disclosure of a patient's/client's health information for purposes other than treatment, payment, or operations is documented.

As Measured by: Documentation exists

- G. Authorization for disclosure of a patient's/client's health information is obtained prior to release (1) to providers outside the HSA Safety Net or (2) from a substance abuse program.

As Measured by: An authorization form that meets the requirements of the Federal Privacy Rule (HIPAA) is signed and in patient's/client's chart/file

### **3. THIRD PARTY BENEFICIARIES**

No third parties are intended by the parties hereto to be third party beneficiaries under this Agreement, and no action to enforce the terms of this Agreement may be brought against either party by any person who is not a party hereto.

### **4. CERTIFICATION REGARDING LOBBYING**

CONTRACTOR certifies to the best of its knowledge and belief that:

- A. No federally appropriated funds have been paid or will be paid, by or on behalf of CONTRACTOR to any persons for influencing or attempting to influence an officer or an employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the entering into of any federal cooperative agreement, or the extension, continuation, renewal, amendment, or modification of a federal contract, grant, loan or cooperative agreement.
- B. If any funds other than federally appropriated funds have been paid or will be paid to any persons for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, CONTRACTOR shall complete and submit Standard Form -111, "Disclosure Form to Report Lobbying," in accordance with the form's instructions.
- C. CONTRACTOR shall require the language of this certification be included in the award documents for all subawards at all tiers, (including subcontracts, subgrants, and contracts under grants, loans and cooperation agreements) and that all subrecipients shall certify and disclose accordingly.
- D. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## **5. MATERIALS REVIEW**

CONTRACTOR agrees that all materials, including without limitation print, audio, video, and electronic materials, developed, produced, or distributed by personnel or with funding under this Agreement shall be subject to review and approval by the Contract Administrator prior to such production, development or distribution. CONTRACTOR agrees to provide such materials sufficiently in advance of any deadlines to allow for adequate review. CITY agrees to conduct the review in a manner which does not impose unreasonable delays.

## Appendix G

# BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum (“Addendum”) supplements and is made a part of the contract (“Contract”) by and between the City and County of San Francisco, Covered Entity (“CE”) and Contractor, Business Associate (“BA”).

### RECITALS

- A. CE wishes to disclose certain information to BA pursuant to the terms of the Contract, some of which may constitute Protected Health Information (“PHI”) (defined below).
- B. CE and BA intend to protect the privacy and provide for the security of PHI disclosed to BA pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws.
- C. As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require CE to enter into a contract containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(a) and (e) and 164.504(e) of the Code of Federal Regulations (“C.F.R.”) and contained in this Addendum.

In consideration of the mutual promises below and the exchange of information pursuant to this Addendum, the parties agree as follows:

#### 1. Definitions

- a. **Breach** shall have the meaning given to such term under the HITECH Act and HIPAA Regulations [42 U.S.C. Section 17921 and 45 C.F.R. Section 164.402].
- b. **Breach Notification Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and D.
- c. **Business Associate** shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including, but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.
- d. **Covered Entity** shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.
- e. **Data Aggregation** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- f. **Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- g. **Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.
- h. **Electronic Health Record** shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.

- i. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- j. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- k. **Protected Health Information or PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the part, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].
- l. **Protected Information** shall mean PHI provided by CE to BA or created, maintained, received or transmitted by BA on CE's behalf.
- m. **Security Incident** shall have the meaning given to such term under the Security Rule, including, but not limited to, 45 C.F.R. Section 164.304.
- n. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- o. **Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h) and 45 C.F.R. Section 164.402.

## 2. **Obligations of Business Associate**

- a. **Permitted Uses.** BA shall use Protected Information only for the purpose of performing BA's obligations under the Contract and as permitted or required under the Contract and Addendum, or as required by law. Further, BA shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by CE. However, BA may use Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE [45 C.F.R. Sections 164.504(e)(2) and 164.504(e)(4)(i)].
- b. **Permitted Disclosures.** BA shall disclose Protected Information only for the purpose of performing BA's obligations under the Contract and as permitted or required under the Contract and Addendum, or as required by law. BA shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by CE. However, BA may disclose Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (ii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE. If BA discloses Protected Information to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Addendum and used or disclosed only as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BA of any breaches, suspected

breaches, security incidents, or unauthorized uses or disclosures of the Protected Information in accordance with paragraph 2. m. of the Addendum, to the extent it has obtained knowledge of such occurrences [42 U.S.C. Section 17932; 45 C.F.R. Section 164.504(e)].

- c. **Prohibited Uses and Disclosures.** BA shall not use or disclose PHI other than as permitted or required by the Contract and Addendum, or as required by law. BA shall not use or disclose Protected Information for fundraising or marketing purposes. BA shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates [42 U.S.C. Section 17935(a) and 45 C.F.R. Section 164.522(a)(vi)]. BA shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of CE and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2), and the HIPAA regulations, 45 C.F.R. Section 164.502(a)(5)(ii); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to the Contract.
- d. **Appropriate Safeguards.** BA shall implement appropriate safeguards to prevent the use or disclosure of Protected Information other than as permitted by the Contract or Addendum, including, but not limited to, administrative, physical and technical safeguards in accordance with the Security Rule, including, but not limited to, 45 C.F.R. Sections 164.308, 164.310, and 164.312. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. BA shall comply with the policies and procedures and documentation requirements of the Security Rule, including, but not limited to, 45 C.F.R. Section 164.316. [42 U.S.C. Section 17931]
- e. **Business Associate's Subcontractors and Agents.** BA shall ensure that any agents and subcontractors that create, receive, maintain or transmit Protected Information on behalf of BA, agree in writing to the same restrictions and conditions that apply to BA with respect to such Protected Information and implement the safeguards required by paragraph 2.d. above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. BA shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. Sections 164.530(f) and 164.530(e)(1)).
- f. **Accounting of Disclosures.** Within ten (10) calendar days of a request by CE for an accounting of disclosures of Protected Information or upon any disclosure of Protected Information for which CE is required to account to an individual, BA and its agents and subcontractors shall make available to CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935 (c), as determined by CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents and subcontractors for at least six(6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an Electronic Health Record. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. If a patient submits a request for an accounting directly to BA or its agents or subcontractors, BA shall forward the request to CE in writing within five(5) calendar days.

- g. **Governmental Access to Records.** BA shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to CE and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining BA's compliance with HIPAA [45 C.F.R. Section 164.504(e)(2)(ii)(I)]. BA shall provide CE a copy of any Protected Information and other documents and records that BA provides to the Secretary concurrently with providing such Protected Information to the Secretary.
- h. **Minimum Necessary.** BA, its agents and subcontractors shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure. [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)] BA understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."
- i. **Data Ownership.** BA acknowledges that BA has no ownership rights with respect to the Protected Information.
- j. **Notification of Possible Breach.** BA shall notify CE within twenty-four (24) hours of any suspected or actual breach of Protected Information; any use or disclosure of Protected Information not permitted by the Contract or Addendum; any security incident (i.e., any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system) related to Protected Information, and any actual or suspected use or disclosure of data in violation of any applicable federal or state laws by BA or its agents or subcontractors. The notification shall include, to the extent possible, the identification of each individual who unsecured Protected Information has been, or is reasonably believed by the business associate to have been, accessed, acquired, used, or disclosed, as well as any other available information that CE is required to include in notification to the individual, the media, the Secretary, and any other entity under the Breach Notification Rule and any other applicable state or federal laws, including, but not limited, to 45 C.F.R. Section 164.404 through 45 C.F.R. Section 164.408, at the time of the notification required by this paragraph or promptly thereafter as information becomes available. BA shall take (i) prompt corrective action to cure any deficiencies and (ii) any action pertaining to unauthorized uses or disclosures required by applicable federal and state laws. (This provision should be negotiated.) [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)]
- k. **Breach Pattern or Practice by Business Associate's Subcontractors and Agents.** Pursuant to 42 U.S.C. Section 17934(b) and 45 C.F.R. Section 164.504(e)(1)(ii), if the BA knows of a pattern of activity or practice of a subcontractor or agent that constitutes a material breach or violation of the subcontractor or agent's obligations under the Contract or Addendum or other arrangement, the BA must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the BA must terminate the Contract or other arrangement if feasible. BA shall provide written notice to CE of any pattern of activity or practice of a subcontractor or agent that BA believes constitutes a material breach or violation of the subcontractor or agent's obligations under the Contract or Addendum or other arrangement within five (5) days of discovery and shall meet with CE to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

### 3. Termination

- a. **Material Breach.** A breach by BA of any provision of this Addendum, as determined by CE, shall constitute a material breach of the Contract and shall provide grounds for immediate termination of the

Contract, any provision in the Contract to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii)].

- b. Judicial or Administrative Proceedings.** CE may terminate the Contract, effective immediately, if (i) BA is named as defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.
- c. Effect of Termination.** Upon termination of the Contract for any reason, BA shall, at the option of CE, return or destroy all Protected Information that BA and its agents and subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by CE, BA shall continue to extend the protections and satisfy the obligations of Section 2 of this Addendum to such information, and limit further use and disclosure of such PHI to those purposes that make the return or destruction of the information infeasible [45 C.F.R. Section 164.504(e)(ii)(2)(J)]. If CE elects destruction of the PHI, BA shall certify in writing to CE that such PHI has been destroyed in accordance with the Secretary's guidance regarding proper destruction of PHI.
- d. Disclaimer**

CE makes no warranty or representation that compliance by BA with this Addendum, HIPAA, the HITECH Act, or the HIPAA Regulations will be adequate or satisfactory for BA's own purposes. BA is solely responsible for all decisions made by BA regarding the safeguarding of PHI.

#### **4. Amendment to Comply with Law.**

The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Contract or Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations and other applicable state or federal laws relating to the security or confidentiality of PHI. The parties understand and agree that CE must receive satisfactory written assurance from BA that BA will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable laws. CE may terminate the Contract upon thirty (30) days written notice in the event (i) BA does not promptly enter into negotiations to amend the Contract or Addendum when requested by CE pursuant to this section or (ii) BA does not enter into an amendment to the Contract or Addendum providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

#### **5. Reimbursement for Fines**

In the event that CE pays a fine to a state or federal regulatory agency based on an impermissible use or disclosure of PHI by BA or its subcontractors or agents, then BA shall reimburse CE in the amount of such fine within thirty (30) calendar days.