

**City and County of San Francisco  
Office of Contract Administration  
Purchasing Division  
City Hall, Room 430  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4685**

**Agreement between the City and County of San Francisco and  
TIDES CENTER**

This Agreement is made this **1<sup>st</sup> day of May, 2019**, in the City and County of San Francisco (“City”), State of California, by and between TIDES CENTER (“Contractor”) and City.

**RECITALS**

**WHEREAS**, the Department of Homelessness and Supportive Housing (“Department”) wishes to provide Property Management services to formerly homeless adult and older adult tenants at six Permanent Supportive Housing sites; and,

**WHEREAS**, this Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 **Request for Proposals (“RFP”) HSH2018-115 – Supportive Housing Property Management**, issued on **November 8, 2018**, in which City selected Contractor as the highest qualified scorer pursuant to the RFP; and

**WHEREAS**, there is no Local Business Entity (“LBE”) subcontracting participation requirement for this Agreement; and

**WHEREAS**, Contractor represents and warrants that it is qualified to perform the Services required by City as set forth under this Agreement; and

**WHEREAS**, the City’s Civil Service Commission approved Personal Services Contract (PSC) number **45693 – 18/19** on February 4, 2019;

**NOW, THEREFORE**, the parties agree as follows:

**ARTICLE 1  
DEFINITIONS**

The following definitions apply to this Agreement:

- 1.1** "Agreement" means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements which are specifically incorporated into this Agreement by reference as provided herein.

- 1.2** "City" or "the City" means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing" and the "Department of Homelessness and Supportive Housing" or "HSH."
- 1.3** "CMD" means the Contract Monitoring Division of the City.
- 1.4** "Confidential Information" means confidential City information including, but not limited to, personally-identifiable information ("PII"), protected health information ("PHI"), or individual financial information (collectively, "Proprietary or Confidential Information") that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (Chapter 12M).
- 1.5** "Contractor" or "Consultant" means TIDES Center.
- 1.6** "Deliverables" means Contractor's work product resulting from the Services that are provided by Contractor to City during the course of Contractor's performance of the Agreement, including without limitation, the work product described in the attached Appendix A, Services to be Provided.
- 1.7** "Effective Date" means the date upon which the City's Controller certifies the availability of funds for this Agreement as provided in Section 3.1.
- 1.8** "Mandatory City Requirements" means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws that impose specific duties and obligations upon Contractor.
- 1.9** "Party" and "Parties" mean the City and Contractor either collectively or individually.
- 1.10** "Services" means the work performed by Contractor under this Agreement as specifically described in the attached Appendix A, Services to be Provided, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

## **ARTICLE 2 TERM OF THE AGREEMENT**

- 2.1 The term of this Agreement shall commence on the later of: (i) **July 1, 2019**; or (ii) the Effective Date and expire on **June 30, 2020**, unless earlier terminated as otherwise provided herein.

### ARTICLE 3 FINANCIAL MATTERS

- 3.1 **Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will 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 the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER  
PROVISIONS OF THIS AGREEMENT.

- 3.2 **Guaranteed Maximum Costs.** The City's payment obligation to Contractor cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, "Modification of this Agreement."

3.3 **Compensation.**

- 3.3.1 **Payment.** Contractor shall provide an invoice to the City on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in **Appendix C, Method of Payment**. Compensation shall be made for Services identified in the invoice that the **Department of Homelessness and Supportive Housing (HSH) Director**, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed **Five Million Eight Hundred Seven Thousand Nine Hundred Ninety Three Dollars (\$5,807,993)**. The breakdown of charges associated with this Agreement appears in **Appendix B, Budget**, attached hereto and incorporated by reference as though

fully set forth herein. A portion of payment may be withheld until conclusion of the Agreement if agreed to both parties as retainage, described in **Appendix C, Method of Payment**. In no event shall City be liable for interest or late charges for any late payments.

Contractor understands that, of the maximum dollars obligation listed in Article 3.3.1, of this Agreement, **Five Hundred Twenty Seven Thousand Nine Hundred Ninety Nine Dollars (\$527,999)** is included as a contingency amount and is neither to be used in Budgets attached to this Agreement or available to Contractor without a modification to this Agreement executed in the same manner as this Agreement or a revision to the **Appendix B, Budget**, which has been approved by HSH. Contractor father understands that no payment of any portion of this contingency amount will be made unless and until such modification or revision has been fully approved and executed in accordance with applicable City and Agency laws regulations, policies/procedures and certification as to the availability of funds by Controller. Contractor agrees to fully comply with these laws, regulations, and policies/procedures.

- 3.3.2 **Payment Limited to Satisfactory Services.** Contractor is not entitled to any payments from City until HSH approves Services, including any furnished Deliverables, as satisfying all of the requirements of this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Deliverables, including equipment, components, materials, or Services even if the unsatisfactory character of such Deliverables, equipment, components, materials, or Services may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials and Services that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.
- 3.3.3 **Withhold Payments.** If Contractor fails to provide Services in accordance with Contractor's obligations under this Agreement, the City may withhold any and all payments due Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.
- 3.3.4 **Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and City, and must include a unique invoice number. Payment shall be made by City as specified in 3.3.6,” or in such alternate manner as the Parties have mutually agreed upon in writing.
- 3.3.5 **Reserved. (LBE Payment and Utilization Tracking System).**
- 3.3.6 **Getting paid for goods and/or services from the City.**

- (a) All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through the City's Automated Clearing House (ACH) payments service/provider. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit [www.sfgov.org/ach](http://www.sfgov.org/ach).
- (b) The following information is required to sign up: (i) The enroller must be their company's authorized financial representative, (ii) the company's legal name, main telephone number and all physical and remittance addresses used by the company, (iii) the company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (iv) the company's bank account information, including routing and account numbers.

### 3.3.7 Grant Funded Contracts.

- (a) **Disallowance.** If Contractor requests or receives payment from City for Services, reimbursement for which is later disallowed by the State of California or United States Government, Contractor 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 Contractor under this Agreement or any other Agreement between Contractor and City.
- (b) **Grant Terms.** The funding for this Agreement is provided in full or in part by a Federal or State Grant to the City. As part of the terms of receiving the funds, the City is required to incorporate some of the terms into this Agreement. The incorporated terms may be found in **Appendix G, Federal Requirements for Subrecipients** and **Appendix H, HUD Subrecipient Agreement**. To the extent that any Grant Term is inconsistent with any other provisions of this Agreement such that Contractor is unable to comply with both the Grant Term and the other provision(s), the Grant Term shall apply.
- (c) Contractor shall insert each Grant Term into each lower tier subcontract. Contractor is responsible for compliance with the Grant Terms by any subcontractor, lower-tier subcontractor or service provider.

**3.4 Audit and Inspection of Records.** Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Services. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not fewer than five years after final payment under this Agreement or until after final audit

has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

**3.5 Submitting False Claims.** The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (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.

**3.6 Reserved. (Payment of Prevailing Wages).**

#### **ARTICLE 4 SERVICES AND RESOURCES**

**4.1 Services Contractor Agrees to Perform.** Contractor agrees to perform the Services provided for in **Appendix A, Services to be Provided**. Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Services beyond the Services to be Provided listed in Appendix A, unless Appendix A is modified as provided in Section 11.5, "Modification of this Agreement."

**4.2 Qualified Personnel.** Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's authorized subcontractors) to perform the Services. Contractor will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

**4.3 Subcontracting.**

4.3.1 Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its subcontractors throughout the course of the work required to perform the Services. All Subcontracts must incorporate the terms of Article 10 "Additional Requirements Incorporated by

Reference” of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void.

- 4.3.2 City's execution of this Agreement constitutes its approval of the subcontractors listed in **Appendix I, Permitted Subcontractors**.

#### **4.4 Independent Contractor; Payment of Employment Taxes and Other Expenses.**

- 4.4.1 **Independent Contractor.** For the purposes of this Article 4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.4.2 **Payment of Employment Taxes and Other Expenses.** 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 Contractor 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 Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

4.5 **Assignment.** The Services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

4.6 **Warranty.** Contractor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement.

## ARTICLE 5 INSURANCE AND INDEMNITY

### 5.1 Insurance.

5.1.1 **Required Coverages.** Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

- (a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and



- (b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
  - (c) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, “Combined Single Limit” for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- 5.1.2 Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:
  - (a) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.
  - (b) 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.
- 5.1.3 All policies shall be endorsed to provide thirty (30) days’ advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 11.1, entitled “Notices to the Parties.”
- 5.1.4 Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.
- 5.1.5 Should any of the required insurance 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.
- 5.1.6 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.

- 5.1.7 Before commencing any Services, Contractor 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. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.
- 5.1.8 The Workers' Compensation policy(ies) 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.
- 5.1.9 If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

**5.2 Indemnification.** Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor'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, 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 Contractor, 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 Contractor's obligation to indemnify City, Contractor 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 Contractor by City and continues at all times thereafter.

Contractor 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 arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Services.

## **ARTICLE 6 LIABILITY OF THE PARTIES**

- 6.1 Liability of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "PAYMENT," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.
- 6.2 Liability for Use of Equipment.** City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.
- 6.3 Liability for Incidental and Consequential Damages.** Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

## **ARTICLE 7 PAYMENT OF TAXES**

- 7.1** Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.
- 7.2** Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:
- 7.2.1** Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.

- 7.2.2 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a “change in ownership” for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.
- 7.2.3 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.
- 7.2.4 Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

## **ARTICLE 8 TERMINATION AND DEFAULT**

### **8.1 Termination for Convenience**

- 8.1.1 City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.
- 8.1.2 Upon receipt of the notice of termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:
- (a) Halting the performance of all Services under this Agreement on the date(s) and in the manner specified by City.
  - (b) Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, Services, equipment or other items.

- (c) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- (d) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
- (e) Completing performance of any Services that City designates to be completed prior to the date of termination specified by City.
- (f) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

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

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

8.1.4 In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in Section 8.1.3. Such non-recoverable

costs include, but are not limited to, anticipated profits on the Services under 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 Section 8.1.3.

- 8.1.5 In arriving at the amount due to Contractor under this Section, City may deduct: (i) all payments previously made by City for Services covered by Contractor's final invoice; (ii) any claim which City may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which, in the opinion of the City, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.
- 8.1.6 City's payment obligation under this Section shall survive termination of this Agreement.

## **8.2 Termination for Default; Remedies.**

8.2.1 Each of the following shall constitute an immediate event of default ("Event of Default") under this Agreement:

(a) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

- 3.5 Submitting False Claims.
- 4.5 Assignment
- Article 5 Insurance and Indemnity
- Article 7 Payment of Taxes
- 10.10 Alcohol and Drug-Free Workplace
- 11.10 Compliance with Laws
- 13.1 Nondisclosure of Private, Proprietary or Confidential Information

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default continues for a period of ten days after written notice thereof from City to Contractor.

(c) Contractor (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 Contractor or of any substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

- (d) A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor'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 Contractor.

8.2.2 On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City.

8.2.3 All 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 exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

8.2.4 Any notice of default must be sent by registered mail to the address set forth in Article 11.

**8.3 Non-Waiver of Rights.** The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

## **8.4 Rights and Duties upon Termination or Expiration.**

8.4.1 This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

3.3.2	Payment Limited to Satisfactory Services
3.3.7(a)	Grant Funded Contracts - Disallowance
3.4	Audit and Inspection of Records
3.5	Submitting False Claims
Article 5	Insurance and Indemnity
6.1	Liability of City
6.3	Liability for Incidental and Consequential Damages
Article 7	Payment of Taxes
8.1.6	Payment Obligation
9.1	Ownership of Results
9.2	Works for Hire
11.6	Dispute Resolution Procedure
11.7	Agreement Made in California; Venue
11.8	Construction
11.9	Entire Agreement
11.10	Compliance with Laws
11.11	Severability
13.1	Nondisclosure of Private, Proprietary or Confidential Information

8.4.2 Subject to the survival of the Sections identified in Section 8.4.1, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

## **ARTICLE 9 RIGHTS IN DELIVERABLES**

**9.1 Ownership of Results.** Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors for the purposes of this agreement, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.



**9.2 Works for Hire.** If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

## **ARTICLE 10 ADDITIONAL REQUIREMENTS INCORPORATED BY REFERENCE**

- 10.1 Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at [http://www.amlegal.com/codes/client/san-francisco\\_ca/](http://www.amlegal.com/codes/client/san-francisco_ca/) .
- 10.2 Conflict of Interest.** By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.
- 10.3 Prohibition on Use of Public Funds for Political Activity.** In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.
- 10.4 Consideration of Salary History.** Contractor shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview,

in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

## **10.5 Nondiscrimination Requirements.**

**10.5.1 Non Discrimination in Contracts.** Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

**10.5.2 Nondiscrimination in the Provision of Employee Benefits.** San Francisco Administrative Code 12B.2. Contractor 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, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

## **10.6 Local Business Enterprise and Non-Discrimination in Contracting Ordinance.**

Contractor shall comply with all applicable provisions of Chapter 14B ("LBE Ordinance"). Contractor is subject to the enforcement and penalty provisions in Chapter 14B.

**10.7 Minimum Compensation Ordinance.** Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Contractor certifies that it is in compliance with Chapter 12P.

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

**10.9 First Source Hiring Program.** Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

**10.10 Alcohol and Drug-Free Workplace.** City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

Contractor agrees in the performance of this Agreement to maintain a drug-free workplace by notifying employees that unlawful drug use is prohibited and specifying what actions will be taken against employees for violations; establishing an on-going drug-free awareness program that includes employee notification and, as appropriate, rehabilitation. Contractor can comply with this requirement by implementing a drug-free workplace program that complies with the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. § 701).

**10.11 Limitations on Contributions.** By executing this Agreement, Contractor acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of 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, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

**10.12 Reserved. (Slavery Era Disclosure).**

**10.13 Reserved. (Working with Minors).**

**10.14 Consideration of Criminal History in Hiring and Employment Decisions.**

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

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

**10.15 Public Access to Nonprofit Records and Meetings.** If Contractor 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, Contractor must comply with the City’s Public Access to Nonprofit Records and Meetings requirements, as set forth in Chapter 12L of the San Francisco Administrative Code, including the remedies provided therein.

**10.16 Food Service Waste Reduction Requirements.** Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

**10.17 Distribution of Beverages and Water.**

10.17.1 **Sugar-Sweetened Beverage Prohibition.** Contractor agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by

San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement.

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

**10.18 Tropical Hardwood and Virgin Redwood Ban.** Pursuant to San Francisco Environment Code Section 804(b), the City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

**10.19 Reserved. (Preservative Treated Wood Products).**

## **ARTICLE 11 GENERAL PROVISIONS**

**11.1 Notices to the Parties.** Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail or email, and shall be addressed as follows:

To City: Department of Homelessness and Supportive Housing  
Contracts Division  
P.O. Box 427400  
San Francisco, CA 94142-7400  
Facsimile No. 415.355.5288

To Contractor: TIDES Center  
The Presidio, P.O. Box 29907  
San Francisco, CA 94129  
Phone: 415.561.6400  
Attn: Kathy Bolts, Senior Advisor  
Email: kbolts@tides.org

Delivering Innovation in Supportive Housing (DISH)  
123 10th Street, Floor 2  
San Francisco, CA 94103  
Phone: 415.776.3474  
Attn: Doug Gary, Director  
Lauren Hall, Director  
Kirk Larson, Deputy Director  
Email: dougary@dishsf.org  
laurenhall@dishsf.org  
kirklarson@dishsf.org

Any notice of default must be sent by registered mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

- 11.2 Compliance with Americans with Disabilities Act.** Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.
- 11.3 Reserved.**
- 11.4 Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.
- 11.5 Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, "Notices to Parties," regarding change in personnel or place, and except by written instrument executed and approved in the same manner as this Agreement.
- 11.6 Dispute Resolution Procedure.**
- 11.6.1 Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Contractor may submit to the Contracting Officer a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.
- 11.6.2 Government Code Claim Requirement.** No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco

Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

- 11.7 Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.
- 11.8 Construction.** All paragraph captions are for reference only and shall not be considered in construing this Agreement.
- 11.9 Entire Agreement.** This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."
- 11.10 Compliance with Laws.** Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.
- 11.11 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.
- 11.12 Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of City and Contractor, 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.
- 11.13 Order of Precedence.** Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated **December 12, 2018**. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFP and the Contractor's proposal.

**ARTICLE 12  
DEPARTMENT SPECIFIC TERMS**

**12.1 Appendices Included in Entire Agreement.** The following appendices are attached to and a part of this Agreement. If there is any conflict between the terms of this Agreement and the Application Documents, the terms of this Agreement shall govern.

Appendix A, Services to be Provided

Appendix B, Budget

Appendix C, Method of Payment

Appendix D, Additional Terms

Appendix E, City and County of San Francisco Business Associate Agreement

Appendix F, Dispute Resolution Procedure

Appendix G, Federal Requirements for Subrecipients

Appendix H, HUD Subrecipient Agreement

Appendix I, Permitted Subcontractors

**ARTICLE 13  
DATA AND SECURITY**

**13.1 Nondisclosure of Private, Proprietary or Confidential Information.**

13.1.1 If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

13.1.2 In the performance of Services, Contractor may have access to City's proprietary or confidential information, the disclosure of which to third parties may damage City. If City discloses proprietary or confidential information to Contractor, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or confidential information.

**13.2 Reserved. (Payment Card Industry ("PCI") Requirements).**

**13.3 Business Associate Agreement.** With respect to information covered by the U.S. Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), a Business Associate Agreement ("BAA") is attached as **Appendix E, City and County of San Francisco Business Associate Agreement.**

**13.4 Management of City Data and Confidential Information**



13.4.1 **Access to City Data.** City shall at all times have access to and control of all data given to Contractor by City in the performance of this Agreement (“City Data” or “Data”), and shall be able to retrieve it in a readable format, in electronic form and/or print, at any time, at no additional cost.

13.4.2 **Use of City Data and Confidential Information.** Contractor agrees to hold City's Confidential Information received from or created on behalf of the City in strictest confidence. Contractor shall not use or disclose City's Data or Confidential Information except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City's Confidential Information outside the United States is subject to prior written authorization by the City. Access to City's Confidential Information must be strictly controlled and limited to Contractor’s staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use the City Data or Confidential Information solely for performing its obligations under the Agreement and not for Contractor’s own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data or Confidential Information by Contractor, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase “unauthorized use” means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

13.4.3 **Disposition of Confidential Information.** Upon termination of Agreement or request of City, Contractor shall within forty-eight (48) hours return all Confidential Information which includes all original media. Once Contractor has received written confirmation from City that Confidential Information has been successfully transferred to City, Contractor shall within ten (10) business days purge all Confidential Information from its servers, any hosted environment Contractor has used in performance of this Agreement, work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five (5) business days of the purge.

## **ARTICLE 14 MACBRIDE AND SIGNATURE**

**14.1 MacBride Principles - Northern Ireland.** The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve

employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

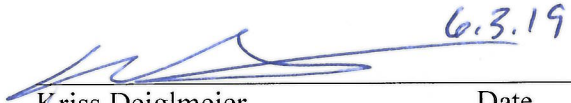
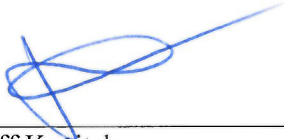
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

**CITY**

**CONTRACTOR**

Recommended by:

**TIDES CENTER**

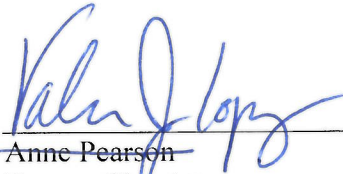
 6.3.19

\_\_\_\_\_  
Jeff Kositsky  
Director  
Department of Homelessness and Supportive  
Housing

\_\_\_\_\_  
Kriss Deiglmeier  
Chief Executive Officer  
The Presidio, P.O. Box 29907  
San Francisco, CA 94129  
Phone: 415.561.6400  
City Supplier ID: 0000009453  
DUNS Number: 947910691

Approved as to Form:

Dennis J. Herrera  
City Attorney

By:   
\_\_\_\_\_  
~~Anne Pearson~~  
Deputy City Attorney  
Valerie J. Lopez

Approved:

  
\_\_\_\_\_  
Alaric Degrafinried  
Director of the Office of Contract Administration,  
and Purchaser

## Appendix A, Services to be Provided

by

TIDES Center

### Property Management at Delivering Innovation in Supportive Housing (DISH) 6 Buildings July 1, 2019 to June 30, 2020

#### I. Purpose of Contract

The purpose of the contract is to provide property management services to formerly homeless adult and older adult tenants in Permanent Supportive Housing. The goal of these services is to help tenants maintain housing and stability.

#### II. Served Population

Contractor shall serve formerly homeless and income-eligible adults and older adults. An adult is defined as an individual or couple 18 years old or older without the custody of minors below 18 years of age. Couples consist of two adult individuals who are married, in a domestic partnership, or who can provide documentation of an established partnership. An older adult is defined as an individual aged 55 or older.

#### III. Referral and Prioritization

All new tenants will be referred by the Department of Homelessness and Supportive Housing (HSH) via the Coordinated Entry System, which organizes the City's Homelessness Response System (HRS) with a common, population-specific assessment, centralized data system, and prioritization method.

Eligibility criteria may include meeting a definition of homelessness at the time of referral and placement, enrollment in specific benefits programs, income criteria and/or the ability to live independently within the structure of the housing program. Tenants who meet eligibility criteria for Permanent Supportive Housing programs are prioritized based on various criteria, such as levels of vulnerability, length and history of homelessness, and severity of housing barriers.

#### IV. Description of Services

Contractor shall provide Property Management to tenants residing at the Permanent Supportive Housing sites listed in Section V. Location and Hours of Service. Property Management services shall include, but are not limited to, the following:

##### A. Stewardship of the Master Lease

1. Contractor shall maintain stewardship of the Master Lease on behalf of HSH and coordinate with the property's owner on regular maintenance items.
2. Contractor shall coordinate and manage regular asset management meetings, on a schedule to be determined with HSH Real Estate staff, to be attended by HSH Real Estate staff, the HSH Program Manager, and Contractor to address ongoing capital needs, property owner's obligations, changes to the Approved Sublease, and other issues as per the Master Lease.

B. Program Applicant Selection and Intake: Contractor shall follow the processes agreed upon by Contractor, HSH, property owner, housing subsidy administrators, and/or other entities involved with referrals.

- C. Annual Tenant Re-certification: As required by rental subsidy type, Contractor shall re-certify tenant income after each year of residence. This is generally done on the anniversary of a tenant's move-in date.
- D. Residential Lease Set-Up: Contractor shall draft, provide, and sign a rental agreement with each tenant at the time of move-in. The lease agreement shall include House Rules and other pertinent Lease Addenda. Contractor shall review its Grievance policies and procedures and HSH policies and procedures with tenants at the time of lease signing.
- E. Collection of Rents, Security Deposits, and Other Receipts: Contractor shall collect and process rent and other housing-related payments made by tenants.
1. Contractor shall communicate and coordinate with local, state and/or federal agencies, as needed, to process rental subsidies.
  2. For tenants paying a portion of their income towards rent, Contractor shall assist with payment arrangements and comply with HSH and other applicable requirements governing how much tenants are required to pay.
  3. Tenants are required to enroll in third party rent payment services. Contractor shall complete and submit referral paperwork to the agency providing the service and notify HSH of any problems with the arrangement.
- F. Lease Enforcement, Written Notices and Eviction Prevention:
1. Contractor shall provide written notice to tenants to notify them of any issue that may affect ongoing tenancy including, but not limited to, failure to pay rent on time or in full, violations of house rules, and/or actions that are in violation of the lease agreement.
  2. When necessary, Contractor shall provide notice to tenants of any actions related to the eviction process in accordance with laws in effect in San Francisco.
  3. Contractor shall work with tenants, in conjunction with Support Services staff, to resolve issues that put tenants at risk of eviction.
  4. Contractor shall copy Support Services staff on all of these communications.
- G. Building Service Payments: Contractor shall set up and manage utility accounts and services related to the property, including but not limited to communications, alarms/security, fire alarm monitoring, garbage, water, and pest control. This may include elevator maintenance, as required.
- H. Building Maintenance: Contractor shall maintain the facility in sanitary and operable condition, post protocol and forms for tenant requests for maintenance or repairs, and respond to requests in a timely manner. Building maintenance shall include the following services:
1. Janitorial services in common areas, offices, and shared-use restroom and shower facilities;
  2. Regular removal of garbage/trash from designated trash areas and maintenance of these areas as clean and functional;

3. Pest control services, as needed;
4. Maintenance and repair of facility systems, plumbing, electrical, safety issues;
5. Building security; and
6. Preparation of apartments for tenant move-in and move-out.

I. Wellness Checks and Emergency Safety Checks: Contractor shall conduct Wellness Checks and/or Emergency Safety Checks in accordance with HSH policy to assess a tenant’s safety when there is a reason to believe the tenant is at immediate and substantial risk due to a medical and/or psychiatric emergency.

J. Front Desk Coverage: Contractor shall provide front desk coverage 24 hours per day, seven days per week.

K. Program Exit Planning: Contractor shall alert Support Services staff when tenants give notice to leave housing and shall keep a record of each tenant’s forwarding address, whenever possible.

**V. Location and Hours of Service**

Contractor shall provide services 24 hours per day, seven days per week, at the six Permanent Supportive Housing sites listed below:

<b>Program Site</b>	<b>Served Population</b>	<b>No. Units to be Served</b>
<b>Camelot</b> 124 Turk Street San Francisco, CA 94102	Adults	55
<b>Empress</b> 144 Eddy Street San Francisco, CA 94102	Adults	89
<b>LeNain</b> 730 Eddy Street San Francisco, CA 94109	Older Adults	86
<b>Pacific Bay Inn</b> 520 Jones Street San Francisco, CA 94102	Adults	75
<b>Star</b> 2176 Mission Street San Francisco, CA 94110	Adults	54
<b>Windsor</b> 238 Eddy Street San Francisco, CA 94102	Adults	91
<b>Total Units</b>		450

**VI. Service Requirements**

A. Coordination with Other Service Providers: Contractor shall maintain a good working relationship with Support Services staff, In-Home Supportive Services (IHSS), HSH,

and all other agencies involved in program operations to ensure communication and coordination that supports program goals.

1. Contractor shall establish a written Memorandum of Understanding (MOU) with Support Service providers and/or Subcontractors, as required by HSH.
- B. Possession of Licenses/Permits: Contractor warrants the possession of all licenses and/or permits required by the laws and regulations of the United States, the State of California, and the City to provide the Services. Failure to maintain these licenses and permits shall constitute a material breach of this contract.
- C. Admission Policy: Admission policies for the services shall be in writing and available to the public. Except to the extent that the services are to be rendered to a specific population as described in the programs listed herein, such policies must include a provision that tenants are accepted for care without discrimination on the basis of race, color, creed, religion, sex, age, national origin, ancestry, sexual orientation, gender identification, disability, or AIDS/HIV status.
- D. Language and Interpretation Services: Contractor shall ensure that interpreter services are available, as needed.
- E. Critical/Significant Incidents: Contractor shall adhere to all applicable HSH Critical/Significant Incident policies, including those regarding relevant and appropriate emergency notifications and submission of written reports to HSH.
- F. Grievance Procedure: Contractor agree to establish and maintain a written Tenant Grievance Procedure, which shall include the following elements, as well as others that may be appropriate to the services:
1. The name or title of the person or persons authorized to make a determination regarding the grievance;
  2. The opportunity for the aggrieved party to discuss the grievance with those who will be making the determination;
  3. The amount of time required for each step, including when a tenant can expect a response; and
  4. HSH Program Manager's contact information for the tenant to contact after the tenant has exhausted the Contractor's internal Grievance Procedure.
- Contractor shall, at program entry, review and provide a copy of this procedure, and any amendments, to each tenant and obtain a signed copy of the form from the tenant, which must be maintained in the tenant's file. Additionally, Contractor shall provide a copy of the procedure and any amendments to the HSH Program Manager or his/her designated agent.
- G. Annual Tenant Survey: Contractor shall utilize a written anonymous survey of tenants at least once a year to gather feedback and assess the awareness of tenants regarding the services and systems within the program. Contractor shall publicize the survey and offer all tenants the opportunity to participate. Contractor shall offer assistance to

tenants regarding completion of the survey if the written format presents any problem.

H. City Communications and Policies

Contractor shall keep HSH informed and comply with City policies to minimize harm and risk, including:

1. Regular communication to HSH about the implementation of the program;
2. Attendance at all meetings as required by HSH. This shall include quarterly HSH meetings, as needed, such as, but not limited to: hearings on issues related to homelessness; and
3. Attendance at trainings, when required by HSH.

I. Record-Keeping and Reporting:

1. Contractor shall maintain confidential tenant files that contain eligibility documentation, signed lease agreement and lease addenda, and documentation of rent collection and other Property Management services, including but not limited to lease violations letters, legal notices, reasonable accommodations paperwork, and incident reports as part of overall program compliance. When required by HSH, Contractor shall maintain eligibility and inspection documentation in the Online Navigation and Entry (ONE) System.
2. Contractor shall maintain files that document the services and supportive work provided for the purpose of tracking and reporting objectives and outcomes.

J. Data Standards:

Contractor shall comply with requirements listed in Section IX. Reporting Requirements of this document. HSH will provide clear instructions to all Contractors regarding the correct mechanism for sharing data. Changes to data collection or reporting requirements shall be communicated to Contractors via written notice at least one month prior to expected implementation.

1. When required by HSH, Contractor shall enter data into the ONE System. Records entered into the ONE system shall meet or exceed the ONE System Continuous Data Quality Improvement Process standards:  
<https://onesf.clarityhs.help/hc/en-us/articles/360001145547-ONE-System-Continuous-Data-Quality-Improvement-Process>.
2. Contractor may be required to report certain measures or conduct interim reporting in CARBON, via secure email, or through uploads to a File Transfer Protocol (FTP) site. When required by HSH, Contractor shall submit the monthly, quarterly and/or annual metrics into either the CARBON database, via secure email, or through uploads to an FTP site.
3. Any information shared between Contractor, HSH, and other providers about tenants shall be communicated in a secure manner, with appropriate release of consent forms and in compliance with Health Insurance Portability and Accountability Act (HIPAA) and privacy guidelines, as applicable.

K. Disaster and Emergency Response Plan: Contractor shall develop and maintain an Agency Disaster and Emergency Response Plan containing Site-Specific Emergency



Response Plan(s) for each service site per HSH requirements. The Agency Disaster and Emergency Response Plan shall address disaster coordination between and among service sites. Contractor shall update the Agency/site(s) plan as needed and Contractor shall train all employees regarding the provisions of the plan for their Agency/site(s).

L. Good Neighbor Policies

Contractor shall maintain a good relationship with the neighborhood, including:

1. Working with the neighborhood to ensure that neighboring concerns about the building are heard and addressed;
2. Working closely with HSH and other relevant agencies to ensure that neighborhood concerns are addressed;
3. Having a representative of the Contractor attend all appropriate neighborhood meetings; and
4. Actively discouraging loitering in the area surrounding the building.

M. Compliance with Funding Source Requirements: Contractor recognizes that funding for these services may be provided to the City through federal, state or private foundation awards. Contractor agrees to comply with the provisions of the funding sources.

L. Compliance with Regulations: Contractor shall:

1. Coordinate with the Department of Building Inspection (DBI), the Department of Public Health (DPH), and/or other City agencies to complete all required inspections of the housing site prior the start of the program;
2. Comply with requirements for ongoing facility inspections;
  - a. In the event that Contractor is given notice violations by DBI, DPH, or another City agency, which impacts Contractor's ability to occupy a unit, it shall notify HSH immediately.
3. Provide facility access to City Departments upon request, including HSH, San Francisco Fire Department, DBI, DPH, and the Mayor's Office.

Additionally, for any units that receive the Department of Housing and Urban Development (HUD) funded rental subsidies, Contractor shall:

4. Ensure that residential buildings meet Housing Quality Standards (HQS) and pass all required HQS inspections upon unit turnover and coordinate with the subsidy administrator to schedule HQS inspections; and
5. Notify subsidy administrator of tenant lease violations, including housing exits, in a timely manner.

N. Other Program Revenue Sources: Contractor agrees that funds received from a source other than the City to defray any portion of the reimbursable costs allowable under the awarded contract shall be reported to the City and deducted by Contractor from billings to the City to ensure that no portion of the City's reimbursement to Contractor is duplicated.

## **VII. Service Objectives**

Contractor shall achieve the Service Objectives listed below. Contractor understands that the Service Objectives listed in this Appendix A may be updated, revised, modified, and/or removed during the term of this contract through HSH's amendment or revision process. Contractor will have the opportunity to provide input about proposed changes to Service Objectives before they are finalized.

- A. Contractor shall provide property management services to the tenants of the 450 units listed in Section V. Location and Hours of Service.
- B. Contractor shall ensure that each unit, upon turnover, is clean and/or repaired within 35 days, on average.
- C. Contractor shall maintain an occupancy rate of at least 90 percent.
- D. Contractor shall offer all tenants the opportunity to complete an annual anonymous Tenant Satisfaction Survey, with the goal of at least sixty-five percent participation.
- E. Contractor shall collect at least 90 percent of tenant portions of monthly rent from occupied units.

## **VIII. Outcome Objectives**

Contractor shall achieve the Outcome Objectives listed below. Contractor understands that the Outcome Objectives listed in this Appendix A may be updated, revised, modified, and/or removed during the term of this contract through HSH's amendment or revision process. Contractor will have the opportunity to provide input about proposed changes to Outcome Objectives before they are finalized.

- A. Ninety percent of surviving tenants will maintain their housing for a minimum of 12 months.
- B. Seventy-five percent of tenants who exit housing will move to other permanent housing, or be provided with more appropriate placements.
- C. Eighty-five percent of tenant lease violations will be resolved without loss of housing to tenants.
- D. Eighty-five percent of tenants completing an annual Tenant Satisfaction Survey will be satisfied or very satisfied with Property Management services.

## **IX. Reporting Requirements**

Contractor shall input data into systems required by HSH, such as the ONE system and CARBON. As program services for these units are supported by various funding sources, including the Mental Health Services Act (MHSA), HUD, and the City's

General Fund. Contractor understands that reporting requirements may differ for services funded by different revenue sources.

- A. When required by HSH, Contractor shall enter data into the ONE system.
- B. Contractor shall provide a monthly report of activities, referencing the tasks as described in the Service and Outcome Objectives sections. Contractor shall enter the monthly metrics in the CARBON database by the 15<sup>th</sup> of the following month, including:
  1. Occupancy rate; and
  2. Number of new placements made for the month, broken down by funding source.
- C. Contractor shall provide a quarterly report of activities, referencing the tasks as described in the Service and Outcome Objectives sections. Contractor shall enter the quarterly metrics in the CARBON database by the 15<sup>th</sup> of the month following the end of the quarter, including:
  1. Average number of days to turn over units;
  2. Number of tenant lease violations that were resolved without loss of housing to tenants; and
  3. Number of tenants who exit housing or move to other permanent housing, or are provided with more appropriate placements.
- D. Contractor shall provide an annual report summarizing the contract activities, referencing the tasks as described in the Service and Outcome Objectives sections. This report shall also include accomplishments and challenges encountered by the Contractor. Contractor shall enter the annual metrics in the CARBON database by the 15<sup>th</sup> of the month following the end of the program year, including:
  1. Number and percentage of tenants who completed an annual Tenant Satisfaction Survey;
  2. Number and percentage of Tenant Satisfaction Survey respondents who indicated they were satisfied or very satisfied with program services; and
  3. Number and percentage of surviving tenants who maintain their housing for a minimum of 12 months.
- E. Contractor shall provide Ad Hoc reports as required by HSH and respond to requests by the HSH in a timely manner. These reports may include the following information:
  1. Monthly rent roll reports;
  2. Monthly cumulative report on the average number of days to complete work orders;
  3. Monthly cumulative report on the number and percentage of tenants housed for one year or more; and
  4. Monthly cumulative report on the number and percentage of exits to permanent housing.
- F. Contractor shall participate, as required by HSH, in City, State and/or Federal government evaluative studies designed to show the effectiveness of Contractor's

services. Contractor agrees to meet the requirements of and participate in the evaluation program and management information systems of the City. The City agrees that any final reports generated through the evaluation program shall be made available to Contractor within 30 working days of receipt of any evaluation report and such response will become part of the official report.

For assistance with reporting requirements or submission of reports, contact the assigned Contract and Program Managers.

## **X. Monitoring Activities**

- A. Program Monitoring: Contractor is subject to program monitoring and/or audits, which may include review of tenant files, review of the Contractor's administrative records, staff training documentation, postings, program policies and procedures, data reported on Annual Performance Report (APR), documentation of match sources, Disaster and Emergency Response Plan and training, personnel and activity reports, proper accounting for funds and other operational and administrative activities, and back-up documentation for reporting progress towards meeting Service and Outcome Objectives.
  
- B. Fiscal Compliance and Contract Monitoring: Fiscal monitoring will include review of the Contractor's organizational budget, the general ledger, quarterly balance sheet, cost allocation procedures and plan, State and Federal tax forms, audited financial statement, fiscal policy manual, supporting documentation for selected invoices, cash receipts and disbursement journals. The compliance monitoring will include review of Personnel Manual, Emergency Operations Plan, Compliance with the Americans with Disabilities Act, subcontracts, and MOUs, and the current board roster and selected board minutes for compliance with the Sunshine Ordinance.

	A	B	AF
1	DEPARTMENT OF HOMELESSNESS AND SUPPORTIVE HOUSING - PROGRAM BUDGET (Appendix B)		
2	Document Date:	5/1/2019	Page 1 of 8
3	Contract Term	Begin Date	End Date
4	Current Term	7/1/2019	6/30/2020
6	<b>BUDGET SUMMARY</b>		
8	Grantee: TIDES Center		
9	Program: Delivering Innovation in Supportive Housing (DISH) - Six Buildings		
10	FSP Contract #: 1000013751		
11	(Check One) New <input checked="" type="checkbox"/> Amendment <input type="checkbox"/> Modification <input type="checkbox"/> Revision <input type="checkbox"/>		
13			
14		<b>Year 1</b>	<b>All Years</b>
15	Program Annual Term	7/1/2019 - 6/30/2020	7/1/2019 - 6/30/2020
16		Current	Current Total
17	<b>General Fund Expenditures</b>		
18	Salaries & Benefits	\$ 3,844,050	\$ 3,844,050
19	Operating Expense	\$ 1,708,363	\$ 1,708,363
20	Subtotal	\$ 5,552,413	\$ 5,552,413
22	Indirect Cost	\$ 924,348	\$ 924,348
23	Other Expenses (Not subject to indirect %)	\$ 43,322	\$ 43,322
24	Capital Expenditure - insert associated years	\$ -	\$ -
25	<b>Total General Fund Expenditures</b>	<b>\$ 6,520,083</b>	<b>\$ 6,520,083</b>
26			
27	<b>MHSA Expenditures</b>		
28	Salaries & Benefits	\$ 297,340	\$ 297,340
29	Operating Expense	\$ 100,239	\$ 100,239
30	Subtotal	\$ 397,579	\$ 397,579
35	<b>Total MHSA Expenditures</b>	<b>\$ 397,579</b>	<b>\$ 397,579</b>
36			
37	<b>HUD Expenditures</b>		
38	Salaries & Benefits	\$ 124,490	\$ 124,490
39	Operating Expense	\$ 87,841	\$ 87,841
40	Subtotal	\$ 212,331	\$ 212,331
45	<b>Total HUD Expenditures</b>	<b>\$ 212,331</b>	<b>\$ 212,331</b>
46			
47	<b>Total Expenditures</b>		
48	Salaries & Benefits	\$ 4,265,879	\$ 4,265,879
49	Operating Expense	\$ 1,896,443	\$ 1,896,443
50	Subtotal	\$ 6,162,322	\$ 6,162,322
51	Indirect Cost Percentage on all Revenues	15.00%	15.00%
52	Total Indirect Cost	\$ 924,348	\$ 924,348
53	Other Expenses (Not subject to indirect %)	\$ 43,322	\$ 43,322
54	Capital Expenditure - insert associated years	\$ -	\$ -
55	<b>Total Expenditures</b>	<b>\$ 7,129,993</b>	<b>\$ 7,129,993</b>
56			
57	<b>HSH Revenues</b>		
58	General Fund	\$ 4,644,511	\$ 4,644,511
60	State Mental Health Service Act (MHSA)	\$ 397,579	\$ 397,579
61	US Dept Housing & Urban Development (HUD)	\$ 212,331	\$ 212,331
62	General Fund - Minimum Compensation Ordinance (MCO)	\$ 25,572	\$ 25,572
63			
64			
65	<b>Total HSH Revenues</b>	<b>\$ 5,279,993</b>	<b>\$ 5,279,993</b>
66			
67	<b>Other Revenues</b>		
68	Rental Income	\$ 1,800,000	\$ 1,800,000
69	Owner Reimbursement	\$ 50,000	\$ 50,000
73	<b>Total Other Revenues</b>	<b>\$ 1,850,000</b>	<b>\$ 1,850,000</b>
74		\$ -	\$ -
75	<b>Total Revenue</b>	<b>\$ 7,129,993</b>	<b>\$ 7,129,993</b>
76			
77	[Total Expenditures] - [Total Revenue]	\$ 0	\$ 0

	A	B	C	D	E	F	AJ
1	DEPARTMENT OF HOMELESSNESS AND SUPPORTIVE HOUSING - PROGRAM BUDGET (Appendix B)						
2							Page 2 of 8
3	Document Date: 5/1/2019						
4							
5	<b>SALARY &amp; BENEFIT DETAIL - General Fund</b>						
6	Grantee: TIDES Center						
7	Program: Delivering Innovation in Supportive Housing (DISH) - Six Buildings						
8	FSP Contract #: 1000013751					<b>Year 1</b>	<b>All Years</b>
9					7/1/2019 - 6/30/2020	7/1/2019 - 6/30/2020	
10		<b>Agency Totals</b>	<b>For HSH Program</b>		<b>Current</b>	<b>Current Total</b>	
11	<b>POSITION TITLE</b>	<b>Annual Full Time Salary for FTE</b>	<b>Total % FTE</b>	<b>% FTE</b>	<b>Adjusted FTE</b>	<b>Current Budgeted Salary</b>	<b>Current Budgeted Salary</b>
12	Administrative Assistant	\$56,774	100%	100%	1.00	\$ 56,774	\$ 56,774
13	Assistant General Manager	\$46,230	800%	58%	4.60	\$ 212,659	\$ 212,659
14	Community Builder	\$61,800	100%	50%	0.50	\$ 30,900	\$ 30,900
15	Deputy Director	\$134,061	100%	55%	0.55	\$ 73,734	\$ 73,734
16	Desk Clerk	\$37,875	3200%	66%	21.09	\$ 798,773	\$ 798,773
17	Director	\$170,102	180%	42%	0.75	\$ 127,219	\$ 127,219
18	Facilities Administrative Assistant	\$59,366	100%	100%	1.00	\$ 59,366	\$ 59,366
19	Director of Facilities	\$125,330	100%	60%	0.60	\$ 75,261	\$ 75,261
20	Facilities Manager	\$78,177	100%	82%	0.78	\$ 60,978	\$ 60,978
21	General Manager	\$67,600	600%	80%	4.79	\$ 323,819	\$ 323,819
22	Janitor	\$40,351	1000%	66%	6.60	\$ 266,435	\$ 266,435
23	Janitorial Supervisor	\$61,800	100%	70%	0.70	\$ 43,260	\$ 43,260
24	Lead Janitor	\$43,919	200%	50%	1.00	\$ 43,876	\$ 43,876
25	Lead Maintenance Worker	\$58,916	100%	100%	1.00	\$ 58,916	\$ 58,916
26	Maintenance Worker I	\$43,705	300%	67%	2.00	\$ 87,414	\$ 87,414
27	Maintenance Worker II	\$48,199	400%	75%	3.00	\$ 144,596	\$ 144,596
28	Operations Manager	\$69,010	100%	100%	1.00	\$ 69,010	\$ 69,010
29	Property Supervisor	\$86,520	100%	100%	1.00	\$ 86,520	\$ 86,520
31	Unit Turnover Supervisor	\$71,385	100%	70%	0.70	\$ 49,969	\$ 49,969
36						\$ -	\$ -
37	<b>TOTALS</b>		77.80	13.89	52.66	\$ 2,669,479	\$ 2,669,479
38							
39	FRINGE BENEFIT RATE	<b>44.00%</b>				44.00%	
40	EMPLOYEE FRINGE BENEFITS					\$ 1,174,571	\$ 1,174,571
41							
42							
43	TOTAL SALARIES & BENEFITS					\$ 3,844,050	\$ 3,844,050
44	<b>HSH #2</b>						

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1	DEPARTMENT OF HOMELESSNESS AND SUPPORTIVE HOUSING - PROGRAM BU		
2			Page 3 of 8
3	Document Date: 5/1/2019		
4			
5	<b>OPERATING DETAIL - General Fund</b>		
6	Grantee: TIDES Center		
7	Program: Delivering Innovation in Supportive Housing (DISH) - Six Buildings		
8	FSP Contract #: 1000013751	<b>Year 1</b>	<b>All Years</b>
9		7/1/2019 - 6/30/2020	7/1/2019 - 6/30/2020
10		Current	Current Total
11	<u>Operating Expenses</u>	Budgeted Expense	Budgeted Expense
12	Rental of Property	\$ 104,667	\$ 104,667
13	Utilities (Elec, Water, Gas, Phone, Scavenger)	\$ 493,270	\$ 493,270
14	Office Supplies, Postage	\$ 55,255	\$ 55,255
15	Building Maintenance Supplies and Repair	\$ 473,864	\$ 473,864
16	Insurance	\$ 81,545	\$ 81,545
17	Printing and Reproduction	\$ -	\$ -
18	Staff Training	\$ 50,000	\$ 50,000
19	Staff Travel-(Local & Out of Town)	\$ 7,893	\$ 7,893
20	Rental of Equipment	\$ -	\$ -
21	Onsite services (Client activities, etc.)	\$ 67,400	\$ 67,400
22	Community Building and Housing Preservation	\$ 9,998	\$ 9,998
23			\$ -
24	<u>Consultants</u>		\$ -
25	Professional Computer Support	\$ 21,600	\$ 21,600
26	AnyreIm	\$ 3,000	\$ 3,000
27	David Merino	\$ 3,000	\$ 3,000
28	John Zanghi - Attorney at Law	\$ 80,000	\$ 80,000
29			\$ -
30	<u>Subcontractors</u>		\$ -
31	Solutions SF	\$ 118,123	\$ 118,123
32	Renoir Staffing	\$ 57,305	\$ 57,305
33	NPM Staffing	\$ 20,000	\$ 20,000
34	Premier Staffing	\$ 11,044	\$ 11,044
35	Mennonite Missionary Network	\$ 14,400	\$ 14,400
36	SF Patrol Special	\$ 36,000	\$ 36,000
37			\$ -
38			
39	<b>TOTAL OPERATING EXPENSES</b>	<b>\$ 1,708,363</b>	<b>\$ 1,708,363</b>
40			
41	<u>Other Expenses (not subject to indirect cost %)</u>		
42	Administrative Fee	\$ 43,322	\$ 43,322
43			\$ -
49	<b>TOTAL OTHER EXPENSES</b>	<b>\$ 43,322</b>	<b>\$ 43,322</b>
51	<b>HS#3</b>		

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1	DEPARTMENT OF HOMELESSNESS AND SUPPORTIVE HOUSING - PROGRAM BUDGET (Appendix B)						
2							
3	Document Date: 5/1/2019						
4							
5	<b>SALARY &amp; BENEFIT DETAIL - MHSA</b>						
6	Grantee: TIDES Center						
7	Program: Delivering Innovation in Supportive Housing (DISH) - Six Buildings						
8	FSP Contract #: 1000013751					<b>Year 1</b>	<b>All Years</b>
9						7/1/2019 - 6/30/2020	7/1/2019 - 6/30/2020
10		<b>Agency Totals</b>		<b>For HSH Program</b>		<b>Current</b>	<b>Current Total</b>
11	<b>POSITION TITLE</b>	<b>Annual Full Time Salary for FTE</b>	<b>Total % FTE</b>	<b>% FTE</b>	<b>Adjusted FTE</b>	<b>Current Budgeted Salary</b>	<b>Current Budgeted Salary</b>
12	Administrative Assistant	\$56,774	100%	0.0%	0.00	\$ -	\$ -
13	Assistant General Manager	\$46,230	800%	12.50%	1.00	\$ 46,230	\$ 46,230
14	Deputy Director	\$134,061	100%	0.0%	0.00	\$ -	\$ -
15	Desk Clerk	\$37,875	3200%	7.4%	2.36	\$ 89,380	\$ 89,380
16	Director	\$170,102	180%	0.0%	0.00	\$ -	\$ -
17	Facilities Administrative Assistant	\$59,366	100%	0.0%	0.00	\$ -	\$ -
18	Director of Facilities	\$125,330	100%	0.0%	0.00	\$ -	\$ -
19	Facilities Manager	\$78,177	100%	0%	0.00	\$ -	\$ -
20	Fund Development Associate	\$61,800	100%	0.0%	0.00	\$ -	\$ -
21	General Manager	\$67,600	600%	13%	0.75	\$ 50,700	\$ 50,700
22	Janitor	\$40,351	1000%	5%	0.50	\$ 20,175	\$ 20,175
23	Janitorial Supervisor	\$61,800	100%	0%	0.00	\$ -	\$ -
24	Lead Janitor	\$43,919	200%	0%	0.00	\$ -	\$ -
25	Lead Maintenance Worker	\$58,916	100%	0%	0.00	\$ -	\$ -
26	Maintenance Worker I	\$43,705	300%	0%	0.00	\$ -	\$ -
27	Maintenance Worker II	\$48,199	400%	0%	0.00	\$ -	\$ -
28	Operations Manager	\$69,010	100%	0%	0.00	\$ -	\$ -
29	Property Supervisor	\$86,520	100%	0%	0.00	\$ -	\$ -
30	Unit Turnover Supervisor	\$71,385	100%	0%	0.00	\$ -	\$ -
31						\$ -	\$ -
36	<b>TOTALS</b>		77.80	0.37	4.61	\$ 206,486	\$ 206,486
37							
38	FRINGE BENEFIT RATE	<b>44.00%</b>				44.00%	
39	EMPLOYEE FRINGE BENEFITS					\$ 90,854	\$ 90,854
40							
41							
42	TOTAL SALARIES & BENEFITS					\$ 297,340	\$ 297,340
43	<b>HSH #2</b>						



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1	DEPARTMENT OF HOMELESSNESS AND SUPPORTIVE HOUSING - PROGRAM B		
2			Page 5 of 8
3	Document Date: 5/1/2019		
4			
5	<b>OPERATING DETAIL - MHSA</b>		
6	Grantee: TIDES Center		
7	Program: Delivering Innovation in Supportive Housing (DISH) - Six Buildings		
8	FSP Contract #: 1000013751	<b>Year 1</b>	<b>All Years</b>
9		7/1/2019 - 6/30/2020	7/1/2019 - 6/30/2020
10		Current	Current Total
11	<u>Operating Expenses</u>	Budgeted Expense	Budgeted Expense
12	Rental of Property		\$ -
13	Utilities (Elec, Water, Gas, Phone, Scavenger)	\$ 51,041	\$ 51,041
14	Office Supplies, Postage		\$ -
15	Building Maintenance Supplies and Repair	\$ 47,198	\$ 47,198
16	Insurance		\$ -
17	Printing and Reproduction		\$ -
18	Staff Training		\$ -
19	Staff Travel-(Local & Out of Town)		\$ -
20	Rental of Equipment		\$ -
21	Onsite services (Client activities, etc.)		
22	Community Building and Housing Preservation	\$ 2,000	\$ 2,000
23			
24			\$ -
25	<u>Consultants</u>		\$ -
26	Professional Computer Support		\$ -
27	Anyreim		\$ -
28	David Merino		\$ -
29	John Zanghi - Attorney at Law		\$ -
30			\$ -
31	<u>Subcontractors</u>		\$ -
32	Solutions SF		\$ -
33	Renoir Staffing		\$ -
34	NPM Staffing		\$ -
35	Premier Staffing		\$ -
36	Mennonite Missionary Network		\$ -
37	SF Patrol Special		\$ -
38			\$ -
41	<b>TOTAL OPERATING EXPENSES</b>	<b>\$ 100,239</b>	<b>\$ 100,239</b>
42			
43	<u>Other Expenses (not subject to indirect cost %)</u>		
44			\$ -
52	<b>TOTAL OTHER EXPENSES</b>	<b>\$ -</b>	<b>\$ -</b>
54	<b>HSH #3</b>		

	A	B	C	D	E	F	AJ
1	DEPARTMENT OF HOMELESSNESS AND SUPPORTIVE HOUSING - PROGRAM BUDGET						(Appendix B)
2							Page 6 of 8
3	Document Date: 5/1/2019						
4							
5	<b>SALARY &amp; BENEFIT DETAIL - HUD</b>						
6	Grantee: TIDES Center						
7	Program: Delivering Innovation in Supportive Housing (DISH) - Six Buildings						
8	FSP Contract #: 1000013751					<b>Year 1</b>	<b>All Years</b>
9						7/1/2019 - 6/30/2020	7/1/2019 - 6/30/2020
10	<b>Agency Totals</b>		<b>For HSH Program</b>			<b>Current</b>	<b>Current Total</b>
11	<b>POSITION TITLE</b>	<b>Annual Full Time Salary for FTE</b>	<b>Total % FTE</b>	<b>% FTE</b>	<b>Adjusted FTE</b>	<b>Current Budgeted Salary</b>	<b>Current Budgeted Salary</b>
12	Administrative Assistant	\$56,774	100%	0.0%	0.00	\$ -	\$ -
13	Assistant General Manager	\$46,230	800%	5.0%	0.40	\$ 18,492	\$ 18,492
14	Deputy Director	\$134,061	100%	0.0%	0.00	\$ -	\$ -
15	Desk Clerk	\$37,875	3200%	1.7%	0.55	\$ 20,855	\$ 20,855
16	Director	\$170,102	180%	0.0%	0.00	\$ -	\$ -
17	Facilities Administrative Assistant	\$59,366	100%	0.0%	0.00	\$ -	\$ -
18	Director of Facilities	\$125,330	100%	0.0%	0.00	\$ -	\$ -
19	Facilities Manager	\$78,177	100%	0%	0.00	\$ -	\$ -
20	Fund Development Manager	\$61,800	100%	0%	0.00	\$ -	\$ -
21	General Manager	\$67,600	600%	8%	0.46	\$ 31,083	\$ 31,083
22	Janitor	\$40,351	1000%	4%	0.40	\$ 16,021	\$ 16,021
23	Janitorial Supervisor	\$61,800	100%	0%	0.00	\$ -	\$ -
24	Lead Janitor	\$43,919	200%	0%	0.00	\$ -	\$ -
25	Lead Maintenance Worker	\$58,916	100%	0%	0.00	\$ -	\$ -
26	Maintenance Worker I	\$43,705	300%	0%	0.00	\$ -	\$ -
27	Maintenance Worker II	\$48,199	400%	0%	0.00	\$ -	\$ -
28	Operations Manager	\$69,010	100%	0%	0.00	\$ -	\$ -
29	Property Supervisor	\$86,520	100%	0%	0.00	\$ -	\$ -
30							
31	Unit Turnover Supervisor	\$71,385	100%	0%	0.00	\$ -	\$ -
32					0.00	\$ -	\$ -
33					0.00	\$ -	\$ -
34					0.00	\$ -	\$ -
35					0.00	\$ -	\$ -
36					0.00	\$ -	\$ -
37	<b>TOTALS</b>	\$1,361,120	77.80	0.18	1.81	\$ 86,451	\$ 86,451
38							
39	FRINGE BENEFIT RATE	<b>44.00%</b>				44.00%	
40	EMPLOYEE FRINGE BENEFITS					\$ 38,038	\$ 38,038
41							
42							
43	TOTAL SALARIES & BENEFITS					\$ 124,490	\$ 124,490
44	<b>HSH #2</b>						

	A	B	AF
1	DEPARTMENT OF HOMELESSNESS AND SUPPORTIVE HOUSING - PROGRAM B		
2			Page 7 of 8
3	Document Date: 5/1/2019		
4			
5	<b>OPERATING DETAIL - HUD</b>		
6	Grantee: TIDES Center		
7	Program: Delivering Innovation in Supportive Housing (DISH) - Six Buildings		
8	FSP Contract #: 1000013751	<b>Year 1</b>	<b>All Years</b>
9		7/1/2019 - 6/30/2020	7/1/2019 - 6/30/2020
10		Current	Current Total
11	<u>Operating Expenses</u>	Budgeted Expense	Budgeted Expense
12	Rental of Property		\$ -
13	Utilities (Elec, Water, Gas, Phone, Scavenger)	\$ 53,967	\$ 53,967
14	Office Supplies, Postage	\$ 4,745	\$ 4,745
15	Building Maintenance Supplies and Repair	\$ 29,129	\$ 29,129
16	Insurance		\$ -
17	Printing and Reproduction		\$ -
18	Staff Training		\$ -
19	Staff Travel-(Local & Out of Town)		\$ -
20	Rental of Equipment		\$ -
21	Onsite services (Client activities, etc.)		\$ -
22	Community Building and Housing Preservation		\$ -
23			\$ -
24	<u>Consultants</u>		\$ -
25	Professional Computer Support		\$ -
26	Anyreim		\$ -
27	David Merino		\$ -
28	John Zanghi - Attorney at Law		\$ -
29			\$ -
30	<u>Subcontractors</u>		\$ -
31	Solutions SF		\$ -
32	Renoir Staffing		\$ -
33	NPM Staffing		\$ -
34	Premier Staffing		\$ -
35	Mennonite Missionary Network		\$ -
36	SF Patrol Special		\$ -
37			\$ -
38			
39	TOTAL OPERATING EXPENSES	\$ 87,841	\$ 87,841
40			
41	<u>Other Expenses (not subject to indirect cost %)</u>		
42			\$ -
50	TOTAL OTHER EXPENSES	\$ -	\$ -
52	<b>HSH #3</b>		

	A	B	C	D	E	F
1	DEPARTMENT OF HOMELESSNESS AND SUPPORTIVE HOUSING - PROGRAM BUDGET (Appendix B)					
2						Page 8 of 8
3	Document Date:					
4						
5						
6						
7	<b>Capital Expenditure Detail</b>					
8	<b>(Equipment and Remodeling Cost)</b>					
9						TOTAL
10	EQUIPMENT		TERM			
11	No.	ITEM/DESCRIPTION, INCLUDING FISCAL YEAR				
12						\$ -
13						\$ -
14						\$ -
15						\$ -
16						\$ -
17						\$ -
18						\$ -
19						\$ -
20	TOTAL EQUIPMENT COST		\$ -	\$ -	\$ -	\$ -
21						
22	REMODELING					
23	Description:					
24						\$ -
25						\$ -
26						\$ -
27						\$ -
28						\$ -
29	TOTAL REMODELING COST		\$ -	\$ -	\$ -	\$ -
30						
31	TOTAL CAPITAL EXPENDITURE		\$ -	\$ -	\$ -	\$ -
32	(Equipment and Remodeling Cost)					
33	HSH #4		Template last m			12/10/2018

## Appendix C, Method of Payment

- I. **Actual Costs**: In accordance with Article 3 Financial Matters of the 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 Appendix B, Budget of the Agreement.
- II. **Automated Clearing House (ACH)**: In accordance with Article 3 Financial Matters of the Agreement, Contractor shall sign up to receive payments electronically via Automated Clearing House (ACH) in order to submit invoices to the Department of Homelessness and Supportive Housing (HSH).
- III. **General Instructions for Invoice Submittal**: Contractor’s invoices shall include actual expenditures incurred during the month, unless otherwise specified.
  - A. **Timelines**: Contractor shall submit all invoices and required documentation in the format specified by HSH, after costs have been incurred, and within 30 days after the month.

<b>Billing Month/Date</b>	<b>Service Begin Date</b>	<b>Service End Date</b>
August 31	July 1	July 31
September 30	August 1	August 31
October 31	September 1	September 30
November 30	October 1	October 31
December 31	November 1	November 30
January 31	December 1	December 31
February 28	January 1	January 31
March 31	February 1	February 28
April 30	March 1	March 31
May 31	April 1	April 30
June 30	May 1	May 31
July 31	June 1	June 30

- B. **Invoicing System**:
  1. Contractor shall complete the required information to submit invoices and attach any required supporting documentation to HSH’s web-based Contracts Administration, Reporting, and Billing Online (CARBON) System at: <https://contracts.sfhsa.org>.
  2. Contractor’s Executive Director or Chief Financial Officer shall submit a letter of authorization designating specific users, including names, emails, and phone numbers, who will have access to CARBON to electronically submit and sign for invoices, make budget revision and budget modification requests, submit program reports, and view other information that is in CARBON.
  3. Submittal of the invoice by Contractor’s designated authorized personnel with proper login credentials constitutes Contractor’s electronic signature and certification of the invoice.

4. Contractor’s authorized personnel with CARBON login credentials shall not share or internally reassign logins.
  5. Contractor shall notify the assigned HSH Contract Manager immediately regarding any need for the restriction or termination of a previously authorized CARBON login.
  6. Contractor may submit bills, invoices and related documentation in the format specified by HSH via paper or email only upon special permission or if requested by HSH.
- C. **Line Item Variance:** There shall be no variance from the line item budget submitted which adversely affects Contractor’s ability to provide services specified in the Appendix A, Services to be Provided; however, Contractor may invoice up to 110 percent of a General Fund line item, provided that total expenditures do not exceed the total budget amount, per the HSH Budget Revision Policy and Procedure: <http://hsh.sfgov.org/overview/provider-updates/>.
- D. **Documentation and Record Keeping:**
1. In accordance with Article 3 Financial Matters of the Agreement, Contractor shall maintain and make available to the City accurate books and accounting records relating to its Services for a period of not fewer than five years after final payment under this Agreement. Contractor shall keep electronic or hard copy records and documentation of all HSH invoiced costs, including, but not limited to, payroll records; paid invoices; receipts; and payments made on behalf of the Served Population, and provide to the City upon request.

2. Contractor shall include, with each monthly invoice, documentation for the following:

<b>Cost Type</b>	<b>Instructions</b>	<b>Examples of Documentation</b>
Salaries & Benefits	Contractor shall attach documentation of payroll expenses paid to all personnel included in the Appendix B, Budget covered by the invoice period.	Documentation may include payroll information from a payroll service or a payroll ledger from Contractor’s accounting system.
Operating and/or Capital	Contractor shall attach documentation of non-recurring expenditures that exceed \$5,000 in the invoice period for items included in the Appendix B, Budget.	Documentation may include receipts of purchases or paid invoices of non-recurring expenditures.
Operating - Subcontractors	Contractor shall attach documentation of subcontracted expenditures that exceed \$10,000 in the invoice period for items included in the Appendix B, Budget.	Documentation may include receipts of purchases or paid invoices of non-recurring expenditures.

**IV. Advances or Prepayments:** Advances or prepayments are allowable on certified Agreement funds (e.g. executed agreements) in order to meet non-profit Contractor cash flow needs in certain circumstances. Requests for advance payment will be granted by HSH on a case-by-case basis and advance payment is not intended to be a regular “automatic” procedure.

A. **Advance Requirements:**

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

1. All Agreement compliance requirements must be currently met (i.e., reports submitted and approved, corrective actions resolved, business tax and insurance certificates in place, prompt and fully documented billings); and
2. Final invoice from the preceding fiscal year must be received prior to advance distribution.

**B. Advance Request Process:**

1. Contractor shall submit a written request via email with a narrative justification that fully describes the unique circumstances to the assigned HSH Contract Manager for review and approval.
2. HSH, at its sole discretion, may make available to Contractor up to two months of the total annualized budget amount, per the Appendix B, Budget, or as mutually agreed upon.
3. If approved by HSH, the advanced sum will be deducted from the Contractor'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.

- V. Timely Submission of Reports:** If reports/documents are required, as specified in the Appendix A, Services to be Provided, Contractor shall submit these reports prior to or in conjunction with invoices. Failure to submit required reports in CARBON by specified deadlines may result in withholding of payments.

## Appendix D, Additional Terms

### 1. Protected Health Information and BAA

The parties acknowledge that the City and County of San Francisco (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, Business Associate Agreement (BAA)**;
- Not Applicable, Contractor will not have access to Protected Health Information.

### 2. Homelessness and Supportive Housing Privacy and Data Security Policies

The Department of Homelessness and Supportive Housing (HSH) has developed Privacy and Data Security Policies that encompass all federal and state confidentiality and data security regulations, including HIPAA and local policies.

Contractor shall abide by the HSH Privacy and Data Security Policies, unless otherwise granted a waiver from certain policies by HSH, and will be monitored and evaluated on the following criteria:

- A. HSH 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 HSH Privacy Policy have been adopted, approved and implemented.
- B. 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.
- C. 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.)
- D. 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.)



- E. 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.
- F. Authorization for disclosure of a patient's/client's health information is obtained prior to release:
  - 1. To providers outside the HSH 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. The City agrees to conduct the review in a manner which does not impose unreasonable delays.

## Appendix E, City and County of San Francisco Business Associate Agreement

This Business Associate Agreement (“BAA”) supplements and is made a part of the agreement by and between the City and County of San Francisco, the Covered Entity (“CE”), and **TIDES Center** (“Contractor”), the Business Associate (“BA”), dated May 1, 2019 (FSP Contract ID# 1000013751) (“Agreement”). To the extent that the terms of the Agreement are inconsistent with the terms of this BAA, the terms of this BAA shall control.

### RECITALS

CE, by and through the Department of Homelessness and Supportive Housing (“HSH”), wishes to disclose certain information to BA pursuant to the terms of the Agreement, some of which may constitute Protected Health Information (“PHI”) (defined below).

For purposes of the Agreement and this BAA, CE requires Contractor, even if Contractor is also a covered entity under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), to comply with the terms and conditions of this BAA as a BA of CE.

CE and BA intend to protect the privacy and provide for the security of PHI disclosed to BA pursuant to the Agreement in compliance with HIPAA, the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”), and regulations promulgated there under by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws, including, but not limited to, California Civil Code §§ 56, et seq., California Health and Safety Code § 1280.15, California Civil Code §§ 1798, et seq., California Welfare & Institutions Code §§5328, et seq., and the regulations promulgated there under (the “California Regulations”).

As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require CE to enter into an agreement 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 BAA.

BA enters into agreements with CE that require the CE to disclose certain identifiable health information to BA. The parties desire to enter into this BAA to permit BA to have access to such information and comply with the BA requirements of HIPAA, the HITECH Act, and the corresponding Regulations.

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

#### 1. Definitions.

- A. Breach** means the unauthorized acquisition, access, use, or disclosure of PHI that compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information, and 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], as well as California Civil Code Sections 1798.29 and 1798.82.

- B. Breach Notification Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Part 164, Subpart D.
- C. Business Associate** is a person or entity that performs certain functions or activities that involve the use or disclosure of protected health information received from a covered entity, but other than in the capacity of a member of the workforce of such covered entity or arrangement, and 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** means a health plan, a health care clearinghouse, or a health care provider who transmits any information in electronic form in connection with a transaction covered under HIPAA Regulations, and 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** means the combining of Protected Information by the BA with the Protected Information received by the BA in its capacity as a BA of another CE, to permit data analyses that relate to the health care operations of the respective covered entities, 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.
- F. Designated Record Set** means a group of records maintained by or for a CE, 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.
- G. Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to, 45 C.F.R. Section 160.103. For the purposes of this BAA, Electronic PHI includes all computerized data, as defined in California Civil Code Sections 1798.29 and 1798.82.
- H. Electronic Health Record** means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff, and shall have the meaning given to such term under 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, including electronic PHI, 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 C.F.R. Sections 160.103 and 164.501. For the purposes of this BAA, PHI includes all medical information and health insurance information as defined in California Civil Code Sections 56.05 and 1798.82.
- 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** means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system, and 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** means PHI that is not secured by a technology standard that renders PHI unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute, and 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. User Training.** The BA shall provide, and shall ensure that BA subcontractors provide, training on PHI privacy and security, including HIPAA and HITECH and its regulations, to each employee or agent that will access, use or disclose Protected Information, upon hire and/or prior to accessing, using or disclosing Protected Information for the first time, and at least annually thereafter during the term of the Agreement. BA shall maintain, and shall ensure that BA subcontractors maintain, records indicating the name of each employee or agent and date on which the PHI privacy and security trainings were completed. BA shall retain, and ensure that BA subcontractors retain, such records for a period of seven years after the Agreement terminates and shall make all such records available to CE within 15 calendar days of a written request by CE.
- B. Permitted Uses.** BA may use, access, and/or disclose Protected Information only for the purpose of performing BA's obligations for, or on behalf of, the City and as permitted or required under the Agreement and BAA, 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 164.502, 164.504(e)(2), and 164.504(e)(4)(i)].

**C. Permitted Disclosures.** BA shall disclose Protected Information only for the purpose of performing BA's obligations for, or on behalf of, the City and as permitted or required under the Agreement and BAA, 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; (iii) 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 BAA 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, security incidents, or unauthorized uses or disclosures of the Protected Information in accordance with paragraph 2 (n) of this BAA, to the extent it has obtained knowledge of such occurrences [42 U.S.C. Section 17932; 45 C.F.R. Section 164.504(e)]. BA may disclose PHI to a BA that is a subcontractor and may allow the subcontractor to create, receive, maintain, or transmit Protected Information on its behalf, if the BA obtains satisfactory assurances, in accordance with 45 C.F.R. Section 164.504(e)(1), that the subcontractor will appropriately safeguard the information [45 C.F.R. Section 164.502(e)(1)(ii)].

**D. Prohibited Uses and Disclosures.** BA shall not use or disclose Protected Information other than as permitted or required by the Agreement and BAA, 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 Protected Information solely relates [42 U.S.C. Section 17935(a) and 45 C.F.R. Section 164.522(a)(1)(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 Agreement.

**E. Appropriate Safeguards.** BA shall take the appropriate security measures to protect the confidentiality, integrity and availability of PHI that it creates, receives, maintains, or transmits on behalf of the CE, and shall prevent any use or disclosure of PHI other than as permitted by the Agreement or this BAA, 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 164.306, 164.308, 164.310, 164.312, 164.314 164.316, and 164.504(e)(2)(ii)(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, and 42 U.S.C. Section 17931. BA is responsible for any civil penalties assessed due to an audit or investigation of BA, in accordance with 42 U.S.C. Section 17934(c).

- F. 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 PHI and implement the safeguards required by paragraph 2.f. above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2) through (e)(5); 45 C.F.R. Section 164.308(b)]. BA shall mitigate the effects of any such violation.
- G. 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 [45 C.F.R. 164.528(b)(2)]. If an individual or an individual's representative 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.
- H. Access to Protected Information.** BA shall make Protected Information maintained by BA or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within (5) days of request by CE to enable CE to fulfill its obligations under state law [Health and Safety Code Section 123110] and the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If BA maintains Protected Information in electronic format, BA shall provide such information in electronic format as necessary to enable CE to fulfill its obligations under the HITECH Act and HIPAA Regulations, including, but not limited to, 42 U.S.C. Section 17935(e) and 45 C.F.R. 164.524.
- I. Amendment of Protected Information.** Within ten (10) days of a request by CE for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, BA and its agents and subcontractors shall make such Protected

Information available to CE for amendment and incorporate any such amendment or other documentation to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R Section 164.526. If an individual requests an amendment of Protected Information directly from BA or its agents or subcontractors, BA must notify CE in writing within five (5) days of the request and of any approval or denial of amendment of Protected Information maintained by BA or its agents or subcontractors [45 C.F.R. Section 164.504(e)(2)(ii)(F)].

**J. 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.

**K. Minimum Necessary.** BA, its agents and subcontractors shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the intended purpose of such use, disclosure, or request. [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” to accomplish the intended purpose in accordance with HIPAA and HIPAA Regulations.

**L. Data Ownership.** BA acknowledges that BA has no ownership rights with respect to the Protected Information.

**M. Notification of Breach.** BA shall notify CE within 5 calendar days of any breach of Protected Information; any use or disclosure of Protected Information not permitted by the BAA; any Security Incident (except as otherwise provided below) related to Protected Information, and any 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 whose unsecured Protected Information has been, or is reasonably believed by the BA 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. [42 U.S.C. Section 17921; 42 U.S.C. Section 17932; 45 C.F.R. 164.410; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)].

**N. 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)(iii), 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 Agreement or this BAA, the BA must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the BA must terminate the contractual arrangement with its subcontractor or agent, 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 this BAA within five (5) calendar 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 BAA, as determined by CE, shall constitute a material breach of the Agreement and this BAA and shall provide grounds for immediate termination of the Agreement and this BAA, any provision in the Agreement to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii).]
- B. Judicial or Administrative Proceedings.** CE may terminate the Agreement and this BAA, 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 Agreement and this BAA 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 BAA 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)(2)(ii)(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. Civil and Criminal Penalties.** BA understands and agrees that it is subject to civil or criminal penalties applicable to BA for unauthorized use, access or disclosure or Protected Information in accordance with the HIPAA Regulations and the HITECH Act including, but not limited to, 42 U.S.C. 17934 (c).
- E. Disclaimer.** CE makes no warranty or representation that compliance by BA with this BAA, HIPAA, the HITECH Act, or the HIPAA Regulations or corresponding California law provisions 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 Agreement or this BAA 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 BAA embodying written assurances consistent with the updated standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable state or federal laws. CE may terminate the Agreement upon thirty (30) days written notice in the event (i) BA does not promptly enter into negotiations to amend the Agreement or this BAA when requested by CE pursuant to this section or (ii) BA does not enter into an amendment to the Agreement or this BAA 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 or Penalties.**

In the event that CE pays a fine to a state or federal regulatory agency, and/or is assessed civil penalties or damages through private rights of action, 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 or penalties or damages within thirty (30) calendar days from City's written notice to BA of such fines, penalties or damages.

## **Appendix F, Dispute Resolution Procedure For Health and Human Services Nonprofit Contractors**

### **Introduction**

The City Nonprofit Contracting Task Force submitted its final report to the Board of Supervisors in June 2003. The report contains thirteen recommendations to streamline the City's contracting and monitoring process with health and human services nonprofits. These recommendations include: (1) consolidate contracts, (2) streamline contract approvals, (3) make timely payment, (4) create review/appellate process, (5) eliminate unnecessary requirements, (6) develop electronic processing, (7) create standardized and simplified forms, (8) establish accounting standards, (9) coordinate joint program monitoring, (10) develop standard monitoring protocols, (11) provide training for personnel, (12) conduct tiered assessments, and (13) fund cost of living increases. The report is available on the Task Force's website at

[https://sfgov.org/sfc/npcontractingtf/Modules/CNPCTF\\_BOS\\_RPT\\_06-26-03\(1\)\\_3adc.PDF](https://sfgov.org/sfc/npcontractingtf/Modules/CNPCTF_BOS_RPT_06-26-03(1)_3adc.PDF).

The Board adopted the recommendations in February 2004. The Office of Contract Administration created a Review/Appellate Panel ("Panel") to oversee implementation of the report recommendations in January 2005.

The Board of Supervisors strongly recommends that departments establish a Dispute Resolution Procedure to address issues that have not been resolved administratively by other departmental remedies. The Panel has adopted the following procedure for City departments that have professional service grants and contracts with nonprofit health and human service providers. The Panel recommends that departments adopt this procedure as written (modified if necessary to reflect each department's structure and titles) and include it or make a reference to it in the contract. The Panel also recommends that departments distribute the finalized procedure to their nonprofit contractors. Any questions or concerns about this Dispute Resolution Procedure should be addressed to [purchasing@sfgov.org](mailto:purchasing@sfgov.org).

### **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 contract between the City and County of San Francisco and nonprofit health and human services contractors.

Contractor 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, Contractors and departments should employ the following steps:

- **Step 1**      The Contractor will submit a written statement of the concern or dispute addressed to the Contract/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 Contract/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 Contractor or provide a written response to the Contractor within 10 working days.

- Step 2 Should the dispute or concern remain unresolved after the completion of Step 1, the Contractor may request review by the Division or Department Head who supervises the Contract/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 Contractor. 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 Contractor 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 Contractor. The Department will respond in writing within 10 working days.

In addition to the above process, Contractors have an additional forum available only for disputes that concern implementation of the thirteen policies and procedures recommended by the Nonprofit Contracting Task Force and adopted by the Board of Supervisors. These recommendations are designed to improve and streamline contracting, invoicing and monitoring procedures. For more information about the Task Force's recommendations, see the June 2003 report at [https://sfgov.org/sfc/npcontractingtf/Modules/CNPCTF\\_BOS\\_RPT\\_06-26-03\(1\)\\_3adc.PDF](https://sfgov.org/sfc/npcontractingtf/Modules/CNPCTF_BOS_RPT_06-26-03(1)_3adc.PDF).

The Review/Appellate Panel oversees the implementation of the Task Force report. The Panel is composed of both City and nonprofit representatives. The Panel invites Contractors to submit concerns about a department's implementation of the policies and procedures. Contractors can notify the Panel after Step 2. However, the Panel will not review the request until all three steps are exhausted. This review is limited to a concern regarding a department's implementation of the policies and procedures in a manner which does not improve and streamline the contracting process. This review is not intended to resolve substantive disputes under the contract such as change orders, scope, term, etc. The Contractor must submit the request in writing to [purchasing@sfgov.org](mailto:purchasing@sfgov.org). This request shall describe both the nature of the concern and why the process to date is not satisfactory to the Contractor. Once all steps are exhausted and upon receipt of the written request, the Panel will review and make recommendations regarding any necessary changes to the policies and procedures or to a department's administration of policies and procedures.

## Appendix G, Federal Requirements for Subrecipients

### I. Definitions

These are Federal definitions that come from Federal Uniform Guidance, 2 CFR Part 200, and are in addition to and may vary from definitions provided in the City's Grant Agreement, Grant Amendment, and Professional Services Agreement documents.

**A. City** means the City and County of San Francisco.

**B. Subaward** means an award provided by a pass-through entity (e.g. the City) to a **Subrecipient** for the Subrecipient to carry out all or part of a Federal award. It does not include payments to an individual that is a beneficiary of a Federal program (2 CFR §200.92). Characteristics of Subawards, as opposed to Subcontracts, include but are not limited to that a Subrecipient:

1. Has programmatic decision-making responsibility within the Scope of Services of the agreement;
2. May determine client eligibility for the federal program;
3. In accordance with its agreement, uses the Federal funds to carry out all or part of Federal a program, as opposed to providing goods or services to help the City administer the Federal program; and
4. See 2 CFR §200.330 for more guidance.

**C. Third Party Subaward** means a Subaward at any tier entered into by a Subrecipient, financed in whole or in part with Federal assistance originally derived from the Federal awarding agency.

**D. Contract and/or Subcontract** means a legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award (2 CFR §200.22). Characteristics of Subcontracts, as opposed to Subawards, include but are not limited that to a **Subcontractor**:

1. Has little or no programmatic decision-making responsibility in how it carries out the purpose of the Contract;
2. Does not determine client eligibility for the federal program;
3. Provides goods or services that are ancillary to the operation of the Federal program and/or that help the City administer the Federal program; and
4. See 2 CFR §200.330 for more guidance.

**E. Third Party Subcontract** means a Subcontract at any tier entered into by Contractor or Subcontractor, financed in whole or in part with Federal assistance originally derived from the Federal awarding agency.

### II. Federal Changes

**A.** Subrecipient shall at all times comply with all applicable regulations, policies, procedures and Federal awarding agency directives, including without limitation those listed directly or by reference in the Master Agreement between the City and the Federal awarding agency or in the Grant Program Guidelines, as they may be

amended or promulgated from time to time during the term of this Agreement. Subrecipient's failure to so comply shall constitute a material breach of this agreement.

### **III. Requirements for Pass-Through Entities (2 CFR §200.331)**

- A.** For any Third Party Subawards that the Subrecipient enters into in the course of carrying out this agreement, the Subrecipient shall include:
  - 1. Federal award information as specified in 2 CFR §200.331(a)(1) to the best of its knowledge;
  - 2. Requirements imposed by the Federal awarding agency, the City, or itself in order to meet its own responsibility to the City under this Subaward;
  - 3. An approved federally recognized indirect cost rate negotiated between the Subrecipient and the Federal Government or. If no such rate exists, either a rate negotiated between the Subrecipient and its Third Party Subrecipients, or a *de minimis* indirect cost rate as defined in §200.414 Indirect (F&A) costs, paragraph (f);
  - 4. A requirement that the Third Party Subrecipient permit the Subrecipient, the City, higher level funders, and auditors to have access to the Subrecipient's records and financial statements as necessary for the Subrecipient to meet the requirements of this part; and
  - 5. Appropriate terms and conditions concerning closeout of the Subaward.
  
- B.** For any Third Party Subawards that the Subrecipient enters into in the course of carrying out this agreement, the Subrecipient agrees to:
  - 1. Evaluate each Third Party Subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the Subaward for purposes of determining the appropriate Subrecipient monitoring described in paragraphs (iii) of this section;
  - 2. Consider imposing specific Subaward conditions upon a Third Party Subrecipient if appropriate as described in 2 CFR §200.207 Specific conditions;
  - 3. Monitor the activities of the Third Party Subrecipient as necessary to ensure that the Subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the Subaward; and that Subaward performance goals are achieved. See 2 CFR §200.331(d) and (e) for specific requirements;
  - 4. Verify that every Third Party Subrecipient is audited as required by 2 CFR §200 Subpart F—Audit Requirements of this part when it is expected that the Subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in 2 CFR §200.501 Audit requirements;
  - 5. Consider whether the results of the Third Party Subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records; and
  - 6. Consider taking enforcement action against noncompliant Third Party Subrecipients as described in 2 CFR §200.338 Remedies for noncompliance of this part and in program regulations.

**IV. Procurement Compliance (2 CFR §200.318 through .326)**

- A.** Subrecipient agrees to comply with the procurement standards set forth in 2 CFR §200.318 through §200.326. This includes but is not limited to the following:
1. General procurement standards, including using its documented procurement procedures which reflect all applicable laws, regulations, and standards; maintaining oversight of contractors; maintaining written standards of conflict covering conflicts of interest and organizational conflicts of interest; avoiding acquisition of duplicative items; awarding contracts only to responsible contractors possessing the ability perform the terms and conditions of the proposed procurement successfully; and maintaining records sufficient to detail the history of procurements.
  2. Providing full and open competition as per 2 CFR §200.319; and
  3. Complying with standards of the five methods of procurement described in 2 CFR §200.320: micro-purchases, small purchases, sealed bids (formal advertising), competitive proposals, and non-competitive (sole source) proposals.

**V. Cost Principles Compliance (2 CFR §200 Subpart E)**

- A.** Subrecipient agrees to comply with the Cost Principle specified in 2 CFR §200 Subpart E for all costs that are allowable and included in this agreement with the City. This includes but is not limited to compliance with the following.
- B.** §200.430 Compensation – personal services, including §200.430(i) regarding Standards for Documentation for Personnel Expense. Charges to Federal awards for salaries and wages must be based on records that accurately reflect the actual work performed. The requirements for these records include but are not limited to that they:
1. Be supported by a system of internal control which provides reasonable assurance that the charges are accurate, allowable, and properly allocated;
  2. Be incorporated into the official records of the Subrecipient;
  3. Reasonably reflect the total activity for which the employee is compensated by the Subrecipient, not exceeding 100% of compensated activities;
  4. Encompass both federally assisted and all other activities compensated by the Subrecipient on an integrated basis, but may include the use of subsidiary records as defined in the Subrecipient's written policy;
  5. Comply with the established accounting policies and practices of the Subrecipient;
  6. Support the distribution of the employee's salary or wages among specific activities or cost objectives if the employee works on more than one Federal award; a Federal award and non-Federal award; an indirect cost activity and a direct cost activity; two or more indirect activities which are allocated using different allocation bases; or an unallowable activity and a direct or indirect cost activity;
  7. Budget estimates alone do not qualify as support for charges to Federal awards, but may be used for interim accounting purposes in certain conditions (see §200.430(i)(1)(viii));

8. In accordance with Department of Labor regulations implementing the Fair Labor Standards Act (FLSA) (29 CFR part 516), charges for the salaries and wages of nonexempt employees, in addition to the supporting documentation described in this section, must also be supported by records indicating the total number of hours worked each day;
9. Salaries and wages of employees used in meeting cost sharing or matching requirements on Federal awards must be supported in the same manner as salaries and wages claimed for reimbursement from Federal awards; and
10. A Subrecipient whose the records may not meet the standards described in this section shall use personnel activity reports (also known as time studies), prescribed certifications for employees working 100% on the same Federal program, or equivalent documentation as supporting documentation.

**VI. Equal Employment Opportunity Compliance** (*applicable to all construction agreements awarded in excess of \$10,000 by grantees and their contractors or subgrantees; 2 CFR §200 Appendix II(c)*)

Subrecipient agrees to comply with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Part 60).

**VII. Davis-Bacon Act Compliance** (*applicable to construction agreements in excess of \$2,000 awarded by grantees and subgrantees when required by Federal grant program legislation; 2 CFR §200 Appendix II(d)*)

Subrecipient agrees to comply with the Davis-Bacon Act (40 U.S.C. 3141-3418) as supplemented by Department of Labor regulations (29 CFR Part 5).

**VIII. Copeland Anti-Kickback Act Compliance** (*applicable to construction agreements in excess of \$2,000 awarded by grantees and subgrantees when required by Federal grant program legislation; 2 CFR §200 Appendix II(d)*)

Subrecipient agrees to comply with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145) as supplemented in Department of Labor regulations (29 CFR Part 3).

**IX. Contract Work Hours and Safety Standards** (*applicable to all agreements awarded by grantees and subgrantees in excess of \$100,000, which involve the employment of mechanics or laborers; 2 CFR §200 Appendix II(e)*)

**A. Compliance:** Subrecipient agrees that it shall comply with Sections 3702 and 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708) as supplemented by Department of Labor regulations (29 CFR Part 5), which are incorporated herein.

**B. Overtime:** No Subrecipient contracting for any part of the work under this Agreement which may require or involve the employment of laborers or mechanics



shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**C. Violation; liability for unpaid wages; liquidated damages:** In the event of any violation of the provisions of Paragraph B, the Subrecipient and any Subcontractor responsible therefore shall be liable to any affected employee for his unpaid wages. In additions, such Contractor and Subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph B in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of his standard workweek of forty hours without payment of the overtime wages required by paragraph B.

**D. Withholding for unpaid wages and liquidated damages:** The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Subrecipient or Subcontractor under any such Contract or any other Federal Contract with the same Prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set for in paragraph C of this section.

**X. Notice of Requirements Pertaining to Intangible Property, Copyrights, Inventions, and Freedom of Information Act Requests (2 CFR §200 Appendix II(f) and 2 CFR §200.315)**

**A.** Title to intangible property (see 2 CFR §200.59 Intangible property) acquired under a Federal award vests upon acquisition in the Subrecipient unless otherwise detailed elsewhere in this agreement. The Subrecipient must use that property for the originally-authorized purpose, and must not encumber the property without approval of the Federal awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property must occur in accordance with the provisions in 2 CFR §200.313 Equipment paragraph (e).

**B.** The Subrecipient may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal award. The Federal awarding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

- C. The Subrecipient is subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements."
- D. The Federal Government has the right to obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.
- E. The Subrecipient shall comply with Freedom of Information Act (FOIA) requests passed down from the Federal government to the City.

**XI. Debarment and Suspension** (*applicable to all contracts and subcontracts; 2 CFR §200 Appendix II(h)*)

- A. Subrecipient represents and warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549 and 12689, "Debarment and Suspension." Subrecipient agrees that neither Subrecipient nor any of its Third Party Subrecipients or Subcontractors shall enter into any third party Subawards or Subcontracts for any of the work under this Agreement with a third party who is debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549 and 12689. 2 CFR §180.220.
- B. Subrecipient and Third Party Subrecipients and Subcontractors can meet this requirement with lower level entities by requiring they sign a certification to its effect and by checking those entities' status at the System for Award Management (SAM) at [www.sam.gov](http://www.sam.gov) under Search Records on a regular, but at least annual, basis.

**XII. Byrd Anti-Lobbying Certification** (*applicable for Subawards or Subcontracts in excess of \$100,000; 2 CFR §200 Appendix II(i) and by inclusion, 45 CFR Part 93*)

- A. Subrecipient hereby certifies, to the best of his or her knowledge and belief, that:
  - 1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the person signing this agreement, to any person 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 the awarding of any Federal award or contract, the making of any Federal grant or contract, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or 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 this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit,

with its offer, OMB Standard Form LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

3. The person signing this agreement shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loan, and cooperative agreements) and require that all recipients of such awards in excess of \$100,000 shall certify and disclose accordingly.

- B.** This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is imposed by section 1352, title 31, U.S. Code. Any person making an expenditure prohibited under this provision or who fails to file or amend the disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

### **XIII. Single Audit Requirements**

Subrecipient shall comply in all respects with 2 CFR §200 Subpart F – Audit Requirements. The Federal expenditures spent under this agreement shall be counted toward the \$750,000 threshold of Federal award expenditures for a Single Audit.

### **XIV. Incorporation of Uniform Administrative Requirements and Exceptions from Federal Awarding Agencies**

- A.** The preceding provisions include, in part, certain standard terms and conditions required by the Federal awarding agency, whether or not expressly set forth in the preceding agreement provisions. All provisions required by the Federal awarding agency, as set forth in 2 CFR Part 200, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all of the Federal awarding agency's mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Subrecipient shall not perform any act, fail to perform any act, or refuse to comply with any City requests that would cause City to be in violation of the Federal awarding agency's terms and conditions.

- B.** Further, all provisions of each Federal Awarding Agency's incorporation of the Uniform Guidance are also hereby incorporated as reference:
  1. US Health and Human Services: 45 CFR Part 75 (includes some exceptions and additions).
  2. US Department of Housing and Urban Development: (no exceptions or additions)
  3. US Department of Education: (no exceptions).
  4. US Department of Agriculture: 2 CFR Part 400.

### **XV. Inclusion of Federal Requirements in Third Party Subawards and Subcontracts**

Subrecipient agrees to include all of the above clauses in each Third Party Subaward and Subcontract (Subcontracts shall exclude Requirements for Pass-Through Entities) financed in whole or in part with Federal assistance provided by the Federal awarding agency, unless the third party agreements do not meet the dollar thresholds indicated.

## **Appendix H, HUD Subrecipient Agreement**

- I.** Subrecipient will maintain the confidentiality of records pertaining to any individual or family that was provided family violence prevention or treatment services through the project.
- II.** The address or location of any family violence project assisted with grant funds will not be made public, except with written authorization of the person responsible for the operations of such project.
- III.** Subrecipient will establish policies and practices that are consistent with, and do not restrict, the exercise of rights provided by subtitle B of title VII of the Act and other laws relating to the provision of educational and related services to individuals and families experiencing homelessness.
- IV.** In the case of a project that provides housing or services to families, that subrecipient will designate a staff person to be responsible for ensuring that children being served in the program are enrolled in school and connected to appropriate services in the community, including early childhood programs such as Head Start, part C of the Individuals with Disabilities Education Act, and programs authorized under subtitle B of title VII of the Act.
- V.** The Subrecipient, its officers, and employees are not debarred or suspended from doing business with the Federal Government.

### Appendix I, Permitted Subcontractors

Name
Solutions SF
Renoir Staffing
NPM Staffing
Premier Staffing
Mennonite Missionary Network
SF Patrol Special