

CITY AND COUNTY OF SAN FRANCISCO
GRANT AGREEMENT

between

CITY AND COUNTY OF SAN FRANCISCO

and

WU YEE CHILDREN'S SERVICES

THIS GRANT AGREEMENT (this "Agreement") is made this **1st** day of **July, 2017**, in the City and County of San Francisco, State of California, by and between **Wu Yee Children's Services, 827 Broadway Street, San Francisco, CA 94133** ("Grantee") and the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation ("City") acting by and through the Agency (as hereinafter defined),

WITNESSETH:

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

To provide Early Learning Scholarship (ELS) Licensed Early Head Start/ Head Start (EHS/HS) Programs to support the city's implementation of the San Francisco Citywide Plan for Early Care and Education; and

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

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

ARTICLE 1
DEFINITIONS

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

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

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

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

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

(e) “**Charter**” shall mean the Charter of City.

(f) “**Controller**” shall mean the Controller of City.

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

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

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

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

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

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

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

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

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

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

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

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

1.2 Additional Terms. The terms “as directed,” “as required” or “as permitted” and similar terms shall refer to the direction, requirement, or permission of the Agency. The terms “sufficient,” “necessary”

or “proper” and similar terms shall mean sufficient, necessary or proper in the sole judgment of the Agency. The terms “approval,” “acceptable” or “satisfactory” or similar terms shall mean approved by, or acceptable to, or satisfactory to the Agency. The terms “include,” “included” or “including” and similar terms shall be deemed to be followed by the words “without limitation”. The use of the term “subcontractor” “successor” or “assign” herein refers only to a subcontractor (“subgrantee”), successor or assign expressly permitted under Article 13.

1.3 References to this Agreement. References to this Agreement include: (a) any and all appendices, exhibits, schedules, attachments hereto; (b) any and all statutes, ordinances, regulations or other documents expressly incorporated by reference herein; and (c) any and all amendments, modifications or supplements hereto made in accordance with Section 17.2. References to articles, sections, subsections or appendices refer to articles, sections or subsections of or appendices to this Agreement, unless otherwise expressly stated. Terms such as “hereunder,” herein or “hereto” refer to this Agreement as a whole.

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

2.1 Risk of Non-Appropriation of Grant Funds. This Agreement is subject to the budget and fiscal provisions of the Charter. City shall have no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. Grantee acknowledges that City budget decisions are subject to the discretion of its Mayor and Board of Supervisors. Grantee assumes all risk of possible non-appropriation or non-certification of funds, and such assumption is part of the consideration for this Agreement.

2.2 Certification of Controller; Guaranteed Maximum Costs. No funds shall be available under this Agreement until prior written authorization certified by the Controller. In addition, as set forth in Section 21.19 of the San Francisco Administrative Code: City's obligations hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by City ordinances governing emergency conditions, City and its employees and officers are not authorized to request Grantee to perform services or to provide materials, equipment and supplies that would result in Grantee performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies specified in this Agreement unless this Agreement is amended in writing and approved as required by law to authorize the additional services, materials, equipment or supplies. City is not required to pay Grantee for services, materials, equipment or supplies that are provided by Grantee which are beyond the scope of the services, materials, equipment and supplies agreed upon herein and which were not approved by a written amendment to this Agreement having been lawfully executed by City. City and its employees and officers are not authorized to offer or promise to Grantee additional funding for this Agreement which would exceed the maximum amount of funding provided for herein. Additional funding for this Agreement in excess of the maximum provided herein shall require lawful approval and certification by the Controller. City is not required to honor any offered or promised additional funding which exceeds the maximum provided in this Agreement which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained. The Controller is not authorized to make payments on any agreement for which funds have not been certified as available in the budget or by supplemental appropriation.

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

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

ARTICLE 3 TERM

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

3.2 Duration of Term. The term of this Agreement shall commence on the later of (a) July 1, 2017 and (b) the effective date specified in Section 3.1. Such term shall end at 11:59 p.m. San Francisco time on) June 30, 2019.

Grant term can be extended at the sole discretion of the Agency for an additional **three** years, subject to the performance of the contractor and the availability of funding.

ARTICLE 4 IMPLEMENTATION OF GRANT PLAN

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

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

4.3 Grantee's Board of Directors. Grantee shall at all times be governed by a legally constituted and fiscally responsible board of directors. Such board of directors shall meet regularly and maintain appropriate membership, as established in Grantee's bylaws and other governing documents and shall adhere to applicable provisions of federal, state and local laws governing nonprofit corporations. Grantee's board of directors shall exercise such oversight responsibility with regard to this Agreement as is necessary to ensure full and prompt performance by Grantee of its obligations under this Agreement.

4.4 Publications and Work Product.

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

(b) Without limiting the obligations of Grantee set forth in subsection (a) above, Grantee shall submit to City for City's prior written approval any Publication, and Grantee shall not disseminate any

such Publication unless and until it receives City's consent. In addition, Grantee shall submit to City for approval, if City so requests, any other program material or form that Grantee uses or proposes to use in furtherance of the Grant Plan, and Grantee shall promptly provide to City one copy of all such materials or forms within two (2) days following City's request. The City's approval of any material hereunder shall not be deemed an endorsement of, or agreement with, the contents of such material, and the City shall have no liability or responsibility for any such contents. The City reserves the right to disapprove any material covered by this section at any time, notwithstanding a prior approval by the City of such material. Grantee shall not charge for the use or distribution of any Publication funded all or in part with the Grant Funds, without first obtaining City's written consent, which City may give or withhold in its sole discretion.

(c) Grantee shall distribute any Publication solely within San Francisco, unless City otherwise gives its prior written consent, which City may give or withhold in its sole discretion. In addition, Grantee shall furnish any services funded in whole or part with the Grant Funds under this Agreement solely within San Francisco, unless City otherwise gives its prior written consent, which City may give or withhold in its sole discretion.

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

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

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

ARTICLE 5 USE AND DISBURSEMENT OF GRANT FUNDS

5.1 Maximum Amount of Grant funds.

The amount of the Grant Funds disbursed hereunder shall not exceed **Six Million, Nine Hundred Sixty-Seven Thousand, Seven Hundred Forty-Eight Dollars (\$6,967,748)** for the period **from July 1, 2017 to June 30, 2019, plus any contingent amount authorized by City and certified as available by the Controller.**

Contingent amount: Up to Six Hundred Ninety-Six Thousand, Seven Hundred Seventy-Five Dollars (\$696,775) for the period from July 1, 2018 to June 30, 2019 (Y2), may be available, in the City's sole discretion as a contingency but only subject to written authorization by the City and if monies are certified as available by the Controller.

The maximum amount of Grant Funds disbursed hereunder shall not exceed **Seven Million, Six Hundred Sixty-Four Thousand, Five Hundred Twenty-Three Dollars (\$7,664,523)** for the period from **July 1, 2017 to June 30, 2019 (Y1-Y2)**.

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

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

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

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

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

5.4 State or Federal Funds:

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

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

ARTICLE 6 REPORTING REQUIREMENTS; AUDITS; PENALTIES FOR FALSE CLAIMS

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

6.2 Organizational Documents. If requested by City, on or before the date of this Agreement, Grantee shall provide to City the names of its current officers and directors and certified copies of its Articles of Incorporation and Bylaws as well as satisfactory evidence of the valid nonprofit status described in Section 8.1.

6.3 Notification of Defaults or Changes in Circumstances. Grantee shall notify City immediately of (a) any Event of Default or event that, with the passage of time, would constitute an Event of Default; and (b) any change of circumstances that would cause any of the representations and warranties contained in Article 8 to be false or misleading at any time during the term of this Agreement.

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

6.5 Books and Records. Grantee shall establish and maintain accurate files and records of all aspects of the Grant Plan and the matters funded in whole or in part with Grant Funds during the term of this Agreement. Without limiting the scope of the foregoing, Grantee shall establish and maintain accurate financial books and accounting records relating to Eligible Expenses incurred and Grant Funds received and expended under this Agreement, together with all invoices, documents, payrolls, time records and other data related to the matters covered by this Agreement, whether funded in whole or in part with Grant Funds. Grantee shall maintain all of the files, records, books, invoices, documents, payrolls and other data required to be maintained under this Section in a readily accessible location and condition for a period of not less than five (5) years after final payment under this Agreement or until any final audit has been fully completed, whichever is later.

6.6 Inspection and Audit. Grantee shall make available to City, its employees and authorized representatives, and its Federal and State funders, during regular business hours all of the files, records, books, invoices, documents, payrolls and other data required to be established and maintained by Grantee under Section 6.5. Grantee shall permit City, its employees and authorized representatives to inspect,

audit, examine and make excerpts and transcripts from any of the foregoing. The rights of City pursuant to this Section shall remain in effect so long as Grantee has the obligation to maintain such files, records, books, invoices, documents, payrolls and other data under this Article 6.

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

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

6.9 Works for Hire. If, in connection with this Agreement or the implementation of the Grant Plan, Grantee or any subgrantee creates artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any other original works of authorship or Publications, such creations shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such creations shall be the property of City. If it is ever determined that any such creations are not works for hire under applicable law, Grantee hereby assigns all copyrights thereto to City, and agrees to provide any material, execute such documents and take such other actions as may be necessary or desirable to effect such assignment. With the prior written approval of City, Grantee may retain and use copies of such creations for reference and as documentation of its experience and capabilities. Grantee shall obtain all releases, assignments or other agreements from subgrantees or other persons or entities implementing the Grant Plan to ensure that City obtains the rights set forth in this Article 6.

ARTICLE 7 TAXES

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

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

(a) Grantee, on behalf of itself and any subgrantees, successors and assigns, recognizes and understands that this Agreement may create a possessory interest subject to property taxation and Grantee, and any subgrantee, successor or assign, may be subject to the payment of such taxes.

(b) Grantee, on behalf of itself and any subgrantees, successors and assigns, further recognizes and understands that any assignment permitted hereunder and any exercise of any option to renew or other extension of this Agreement may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Grantee shall report any assignment or other transfer of any interest in this Agreement or any renewal or extension thereof to the County Assessor within sixty (60) days after such assignment, transfer, renewal or extension.

(c) Grantee shall provide such other information as may be requested by City to enable City to comply with any reporting requirements under applicable law with respect to possessory interests.

7.3. Earned Income Credit (EIC) Forms. Reserved

ARTICLE 8 REPRESENTATIONS AND WARRANTIES

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

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

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

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

8.4 Conflict of Interest.

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

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

8.5 No Other Agreements with City. Except as expressly itemized in Appendix D, neither Grantee nor any of Grantee's affiliates, officers, directors or employees has any interest, however remote, in any other agreement with City including any commission, department or other subdivision thereof.

8.6 Subcontracts. Except as may be permitted under Section 13.3, Grantee has not entered into any agreement, arrangement or understanding with any other person or entity pursuant to which such person or entity will implement or assist in implementing all or any portion of the Grant Plan.

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

ARTICLE 9 INDEMNIFICATION AND GENERAL LIABILITY

9.1 Indemnification. Grantee shall indemnify, protect, defend and hold harmless each of the Indemnified Parties from and against any and all Losses arising from, in connection with or caused by: (a) a material breach of this Agreement by Grantee; (b) a material breach of any representation or warranty of Grantee contained in this Agreement; (c) any personal injury caused, directly or indirectly, by any act or omission of Grantee or its employees, subgrantees or agents; (d) any property damage caused, directly or indirectly by any act or omission of Grantee or its employees, subgrantees or agents; (e) the use, misuse or failure of any equipment or facility used by Grantee, or by any of its employees, subgrantees or agents, regardless of whether such equipment or facility is furnished, rented or loaned to Grantee by an Indemnified Party; (f) any tax, fee, assessment or other charge for which Grantee is responsible under Article 7; or (g) any infringement of patent rights, copyright, trade secret or any other proprietary right or trademark of any person or entity in consequence of the use by any Indemnified Party of any goods or services furnished to such Indemnified Party in connection with this Agreement. Grantee's obligations under the immediately preceding sentence shall apply to any Loss that is caused in whole or in part by the active or passive negligence of any Indemnified Party, but shall exclude any Loss caused solely by the willful misconduct of the Indemnified Party. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

9.2 Duty to Defend; Notice of Loss. Grantee acknowledges and agrees that its obligation to defend the Indemnified Parties under Section 9.1: (a) is an immediate obligation, independent of its other obligations hereunder; (b) applies to any Loss which actually or potentially falls within the scope of Section 9.1, regardless of whether the allegations asserted in connection with such Loss are or may be groundless, false or fraudulent; and (c) arises at the time the Loss is tendered to Grantee by the Indemnified Party and continues at all times thereafter. The Indemnified Party shall give Grantee prompt notice of any Loss under Section 9.1 and Grantee shall have the right to defend, settle and compromise any such Loss; provided, however, that the Indemnified Party shall have the right to retain its own counsel at the expense of Grantee if representation of such Indemnified Party by the counsel retained by Grantee would be inappropriate due to conflicts of interest between such Indemnified Party and Grantee. An Indemnified Party's failure to notify Grantee promptly of any Loss shall not relieve Grantee of any liability to such Indemnified Party pursuant to Section 9.1, unless such failure materially impairs Grantee's ability to defend such Loss. Grantee shall seek the Indemnified Party's prior written consent to settle or compromise any Loss if Grantee contends that such Indemnified Party shares in liability with respect thereto.

9.3 Incidental and Consequential Damages. Losses covered under this Article 9 shall include any and all incidental and consequential damages resulting in whole or in part from Grantee's acts or

omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that any Indemnified Party may have under applicable law with respect to such damages.

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

ARTICLE 10 INSURANCE

10.1 Types and Amounts of Coverage. Without limiting Grantee's liability pursuant to Article 9, Grantee shall maintain in force, during the full term of this Agreement, insurance in the following amounts and coverages:

(a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than one million dollars (\$1,000,000) each accident, injury, or illness.

(b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; policy must include Abuse and Molestation coverage, and

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

10.2 Additional Requirements for General and Automobile Coverage. Commercial General Liability and Commercial Automobile Liability insurance policies shall:

(a) Name as additional insured City and its officers, agents and employees.

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

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

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

claims made after expiration or termination of the Agreement, such claims shall be covered by such claims-made policies.

10.5 General Annual Aggregate Limit/Inclusion of Claims Investigation or Legal Defense Costs. Should any of the insurance required hereunder be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

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

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

10.8 Insurance for Subcontractors and Evidence of this Insurance. If a subcontractor will be used to complete any portion of this agreement, the grantee shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents, and employees and the grantee listed as additional insureds.

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

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

ARTICLE 11 EVENTS OF DEFAULT AND REMEDIES

11.1 Events of Default. The occurrence of any one or more of the following events shall constitute an "Event of Default" under this Agreement:

(a) **False Statement.** Any statement, representation or warranty contained in this Agreement, in the Application Documents, in any Funding Request or in any other document submitted to City under this Agreement is found by City to be false or misleading.

(b) **Failure to Provide Insurance.** Grantee fails to provide or maintain in effect any policy of insurance required in Article 10.

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

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

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

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

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

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

11.2 Termination for Convenience

a. City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Grantee 30 day written notice of termination. The notice shall specify the date on which termination shall become effective.

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

(1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.

(2) Not placing any further orders or subgrants for materials, services, equipment or other items.

(3) Terminating all existing orders and subgrants.

(4) At City's direction, assigning to City any or all of Grantee's right, title, and interest under the orders and subgrants terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subgrants.

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

(6) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.

(7) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Grantee and in which City has or may acquire an interest.

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

(1) The reasonable cost to Grantee, without profit, for all services and other work City directed Grantee to perform prior to the specified termination date, for which services or work City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Grantee's direct costs for services or other work. Any overhead allowance shall be separately itemized. Grantee may also recover the reasonable cost of preparing the invoice.

(2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Grantee can establish, to the satisfaction of City, that Grantee would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(3) The reasonable cost to Grantee of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.

(4) A deduction for the cost of materials to be retained by Grantee, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the services or other work.

d. In no event shall City be liable for costs incurred by Grantee or any of its subgrantees after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

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

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

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

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

(b) **Withholding of Grant Funds.** City may withhold all or any portion of Grant Funds not yet disbursed hereunder, regardless of whether Grantee has previously submitted a Funding Request or whether City has approved the disbursement of the Grant Funds requested in any Funding Request. Any Grant Funds withheld pursuant to this Section and subsequently disbursed to Grantee after cure of applicable Events of Default shall be disbursed without interest.

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

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

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

ARTICLE 12 DISCLOSURE OF INFORMATION AND DOCUMENTS

12.1 Protection of Private Information.

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

b. Protected Social Service and Personal Health Information. Contractor, all subgrantees, and all agents and employees of Contractor and any subgrantee shall comply with any and all privacy laws regarding social service recipient information and/or the transmission, storage and protection of all private health information disclosed to Contractor by City in the performance of this Agreement. Contractor agrees that any failure of Contractor to comply with the requirements of federal and/or state and/or local privacy laws shall be a material breach of the Contract. In the event that City pays a regulatory fine, and/or is assessed civil penalties or damages through private rights of action, based on an

impermissible use or disclosure of protected social service or protected health information given to Contractor or its subgrantees or agents by City, Contractor shall indemnify City for the amount of such fine or penalties or damages, including costs of notification. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract.

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

12.2 Sunshine Ordinance. Grantee acknowledges and agrees that this Agreement and the Application Documents are subject to Section 67.24(e) of the San Francisco Administrative Code, which provides that grants, including this Agreement, grantee's bids, responses to Requests for Proposals (RFPs) and all other records of communications between City and persons or entities seeking grants, shall be open to inspection immediately after a grant has been awarded. Nothing in such Section 67.24(e) (as it exists on the date hereof) requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a grant or other benefit until and unless that person or organization is awarded the grant or benefit. All information provided by Grantee that is covered by such Section 67.24(e) (as it may be amended from time to time) will be made available to the public upon request.

12.3 Financial Projections. Pursuant to San Francisco Administrative Code Section 67.32, Grantee has on or before the date hereof provided to City financial projections, including profit and loss figures, for the Project. For the term of the Agreement, Grantee shall within one hundred twenty (120) days after the end of Grantee's fiscal year end provide to City annual financial statements for the Project certified by the Grantee as complete and accurate and audited by an independent accounting firm. The Grantee acknowledges and agrees that the financial projections and audited financial statements shall be public records subject to disclosure upon request.

ARTICLE 13 ASSIGNMENTS AND SUBCONTRACTING

13.1 No Assignment by Grantee. Grantee shall not, either directly or indirectly, assign, transfer, hypothecate, subcontract or delegate all or any portion of this Agreement or any rights, duties or obligations of Grantee hereunder without the prior written consent of City. This Agreement shall not, nor shall any interest herein, be assignable as to the interest of Grantee involuntarily or by operation of law without the prior written consent of City. A change of ownership or control of Grantee or a sale or transfer of substantially all of the assets of Grantee shall be deemed an assignment for purposes of this Agreement.

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

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

(a) **Limitations.** In no event shall Grantee subcontract or delegate the whole of the Grant Plan. Grantee may subcontract with any of the permitted subgrantees set forth on Appendix E without the prior consent of City; provided, however, that Grantee shall not thereby be relieved from any liability or obligation under this Agreement and, as between City and Grantee, Grantee shall be responsible for the acts, defaults and omissions of any subgrantees or its agents or employees as fully as if they were the acts, defaults or omissions of Grantee. Grantee shall ensure that its subgrantees comply with all of the terms of this Agreement, insofar as they apply to the subcontracted portion of the Grant Plan. All references herein to duties and obligations of Grantee shall be deemed to pertain also to all subgrantees to the extent applicable. A default by any subcontractor shall be deemed to be an Event of Default hereunder. Nothing contained in this Agreement shall create any contractual relationship between any subgrantee and City.

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

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

ARTICLE 14 INDEPENDENT CONTRACTOR STATUS

14.1 Nature of Agreement. Grantee shall be deemed at all times to be an independent grantee and is solely responsible for the manner in which Grantee implements the Grant Plan and uses the Grant Funds. Grantee shall at all times remain solely liable for the acts and omissions of Grantee, its officers and directors, employees and agents. Nothing in this Agreement shall be construed as creating a partnership, joint venture, employment or agency relationship between City and Grantee.

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

14.3 Consequences of Recharacterization.

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

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

(c) A determination of employment status pursuant to either subsection (a) or (b) of this Section 14.3 shall be solely for the purposes of the particular tax in question, and for all other purposes of

this Agreement, Grantee shall not be considered an employee of City. Notwithstanding the foregoing, if any court, arbitrator, or administrative authority determine that Grantee is an employee for any other purpose, Grantee agrees to a reduction in City's financial liability hereunder such that the aggregate amount of Grant Funds under this Agreement does not exceed what would have been the amount of such Grant Funds had the court, arbitrator, or administrative authority had not determined that Grantee was an employee.

ARTICLE 15 NOTICES AND OTHER COMMUNICATIONS

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

If to the Agency or City: Human Services Agency
Office of Contract Management, GB16
P.O. Box 7988
San Francisco, CA 94120-7988
Facsimile No. 415-557-5679

If to Grantee: Wu Yee Children's Services
827 Broadway Street
San Francisco, CA 94133
Attn: Monica Walters
Email: Monica.Walters@wuyee.org

15.2 Effective Date. All communications sent in accordance with Section 15.1 shall become effective on the date of receipt. Such date of receipt shall be determined by: (a) if mailed, the return receipt, completed by the U.S. postal service; (b) if sent via hand delivery, a receipt executed by a duly authorized agent of the party to whom the notice was sent; or (c) if sent via facsimile, the date of telephonic confirmation of receipt by a duly authorized agent of the party to whom the notice was sent or, if such confirmation is not reasonably practicable, the date indicated in the facsimile machine transmission report of the party giving such notice.

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

ARTICLE 16 COMPLIANCE

16.1 Local Business Enterprise Utilization; Liquidated Damages. Reserved.

16.2 Nondiscrimination; Penalties.

(a) **Grantee Shall Not Discriminate.** In the performance of this Agreement, Grantee agrees not to discriminate against any employee, City and County employee working with such grantee or subgrantee, applicant for employment with such grantee or subgrantee, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity,

domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

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

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

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

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

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

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

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

16.6 Resource Conservation; Liquidated Damages. Chapter 5 of the San Francisco Environment Code (Resource Conservation) is incorporated herein by reference. Failure by Grantee to comply with

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

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

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

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

16.8. Requiring Minimum Compensation for Covered Employees

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

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

c. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

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

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

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

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

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

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

16.9 Limitations on Contributions. Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who grants with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the grant must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the grant until the later of either the termination of negotiations for such grant or six months after the date the grant is approved. Contractor acknowledges that the foregoing restriction applies only if the grant or a combination or series of grants approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the grant; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor

listed in the bid or grant; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Contractor further agrees to provide to City the names of each person, entity or committee described above.

16.10 First Source Hiring Program.

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

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

(1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of Chapter 83. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of Chapter 83.

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

(3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

(4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

(5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of Chapter 83. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of grants and property grants handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City grant or property grant has taken actions primarily for the purpose of circumventing the requirements of Chapter 83, that employer shall be subject to the sanctions set forth in Section 83.10 of Chapter 83.

(6) Set the term of the requirements.

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

(8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with Chapter 83.

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

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

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

e. Liquidated Damages. Contractor agrees:

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

(2) To be subject to the procedures governing enforcement of breaches of grants based on violations of grant provisions required by Chapter 83 as set forth in this section;

(3) That the Contractor's commitment to comply with Chapter 83 is a material element of the City's consideration for this grant; that the failure of the Contractor to comply with the grant provisions required by Chapter 83 will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the Contractor from the first source hiring process, as determined by the FSHA during its first investigation of a Contractor, does not exceed a fair

estimate of the financial and other damages that the City suffers as a result of the Contractor's failure to comply with its first source referral contractual obligations.

(4) That the continued failure by a Contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the Contractor's continued failure to comply with its first source referral contractual obligations;

(5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

A. The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

B. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a Contractor to comply with its first source referral contractual obligations.

(6) That the failure of Contractors to comply with Chapter 83, except property Contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the grant or at law; and

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

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

16.11 Prohibition on Political Activity with City Funds. In accordance with S. F. Administrative Code Chapter 12.G, no funds appropriated by the City and County of San Francisco for this Agreement may be expended for organizing, creating, funding, participating in, supporting, or attempting to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity"). The terms of San Francisco Administrative Code Chapter 12.G are incorporated herein by this reference.

Accordingly, an employee working in any position funded under this Agreement shall not engage in any Political Activity during the work hours funded hereunder, nor shall any equipment or resource funded by this Agreement be used for any Political Activity. In the event Grantee, or any staff member in association with Grantee, engages in any Political Activity, then (i) Grantee shall keep and maintain

appropriate records to evidence compliance with this section, and (ii) Grantee shall have the burden to prove that no funding from this Agreement has been used for such Political Activity. Grantee agrees to cooperate with any audit by the City or its designee in order to ensure compliance with this section. In the event Grantee violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement and any other agreements between Grantee and City, (ii) prohibit Grantee from bidding on or receiving any new City grant for a period of two (2) years, and (iii) obtain reimbursement of all funds previously disbursed to Grantee under this Agreement.

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

16.13 Supervision of Minors. Grantee, and any subgrantees, shall comply with California Penal Code section 11105.3 and request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in Welfare and Institution Code section 15660(a) of any person who applies for employment or volunteer position with Grantee, or any subgrantee, in which he or she would have supervisory or disciplinary power over a minor under his or her care. If Grantee, or any subgrantee, is providing services at a City park, playground, recreational center or beach (separately and collectively, “Recreational Site”), Grantee shall not hire, and shall prevent its subgrantees from hiring, any person for employment or volunteer position to provide those services if that person has been convicted of any offense that was listed in former Penal Code section 11105.3 (h)(1) or 11105.3(h)(3). If Grantee, or any of its subgrantees, hires an employee or volunteer to provide services to minors at any location other than a Recreational Site, and that employee or volunteer has been convicted of an offense specified in Penal Code section 11105.3(c), then Grantee shall comply, and cause its subgrantees to comply with that section and provide written notice to the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer not less than ten (10) days prior to the day the employee or volunteer begins his or her duties or tasks. Grantee shall provide, or cause its subgrantees to provide City with a copy of any such notice at the same time that it provides notice to any parent or guardian. Grantee shall expressly require any of its subgrantees with supervisory or disciplinary power over a minor to comply with this section of the Agreement as a condition of its grant with the subgrantee. Grantee acknowledges and agrees that failure by Grantee or any of its subgrantees to comply with any provision of this section of the Agreement shall constitute an Event of Default.

16.14 Public Access to Meetings and Records. If the Grantee receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, the Grantee shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Grantee agrees to open its meetings and records to the public in the manner set forth in Sections 12L.4 and 12L.5 of the Administrative Code. The Grantee further agrees to make good-faith efforts to promote community membership on its Board of Directors in the manner set forth in Section 12L.6 of the Administrative Code. The Grantee acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Grantee further acknowledges that

such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

16.15 Consideration of Criminal History in Hiring and Employment Decisions.

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

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

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

(d) Contractor or Subcontractor shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant’s or potential applicant for employment, or employee’s: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(e) Contractor or Subcontractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection 16.15(d), above. Contractor or Subcontractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

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

(g) Contractor and Subcontractors shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE’s website, in a conspicuous place at every workplace, job site, or other location under the Contractor or Subcontractor’s control at which work is being done or

will be done in furtherance of the performance of this Agreement. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

(h) Contractor understands and agrees that if it fails to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to, a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

16.16 Food Service Waste Reduction Requirements. Effective June 1, 2007, Grantee agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Grantee agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Grantee agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Grantee's failure to comply with this provision.

16.17 Sugar-Sweetened Beverage Prohibition. Contractor agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement.

16.18 Slavery Era Disclosure. Reserved

16.19 Compliance with Other Laws. Without limiting the scope of any of the preceding sections of this Article 16, Grantee shall keep itself fully informed of City's Charter, codes, ordinances and regulations and all state, and federal laws, rules and regulations affecting the performance of this Agreement and shall at all times comply with such Charter codes, ordinances, and regulations rules and laws.

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

ARTICLE 17 MISCELLANEOUS

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

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

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

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

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

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

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

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

17.13 Cooperative Drafting. This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or

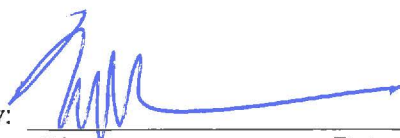
rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

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

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

CITY



HUMAN SERVICES AGENCY

By: 
Trent Rhorer
Executive Director
Human Services Agency

Date 9/11/17

Approved as to Form:

Dennis J. Herrera
City Attorney

By:  9/6/17
Anne Pearson Date
Deputy City Attorney 

GRANTEE:

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

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

WU YEE CHILDREN'S SERVICES

By: 
Monica Walters
Date 8/22/17

Monica Walters
Chief Executive Director
827 Broadway Street
San Francisco, CA 94133
Phone: (415) 230-7500

Federal Tax ID #: 94-2387002
City Vendor Number: 8025
DUNS #: 165384835

Appendix A – Services to be Provided
WU YEE CHILDREN’S SERVICES
**EARLY LEARNING SCHOLARSHIP (ELS) LICENSED EARLY HEAD START/
 HEAD START (EHS-HS) PROGRAMS**
July 1, 2017 to June 30, 2019

I. Purpose of Grant

To provide Early Learning Scholarship (ELS) Licensed Early Head Start/ Head Start (EHS/HS) Programs to support the city’s implementation of the San Francisco Citywide Plan for Early Care and Education. This is a mechanism for EHS/HS federal grantees to better meet the cost of providing quality care to the EHS/HS populations

II. Definitions

0-5 Continuity	Target Population families who lose subsidy eligibility for state funding may continue in care until their child reaches kindergarten with annual eligibility redeterminations for state/federal funding
<u>CA ECE Workforce Registry</u>	A web-based data system that collects workforce data such as qualifications, verified education, professional development, compensation and employment history, and demographics, and is linked to program data.
CDE	California Department of Education
CDSS	California Department of Social Services
CLASS	Classroom Assessment Scoring System. An external assessment of teacher-child interactions.
Comprehensive Fiscal Analysis (CFA)	<u>The Comprehensive Fiscal Analysis</u> was conducted by a national team of experts, providing an inventory of federal, state, and local investments, and proposing approaches and models for restructuring San Francisco’s local early care and education investments. The CFA recommendations and analysis were critical to the development of the ELS approach.
DHS	San Francisco Department of Human Services, a division of HSA.
DRDP	Desired Results Developmental Profile assessment for children ages 0-5 required of CDE Grantees.
ELS	San Francisco Early Learning Scholarships are local funds that ensure providers can cover the cost of operating at a QRIS Tier 3 level. OECE may determine, over time, changes in costs or tiers for ELS reimbursement.
ELS–Bridge	Early Learning Scholarship (ELS) Bridge provides continuity of care for families who have lost eligibility in local and/or state subsidy programs or provides funding, on a case-by-case basis, to

	maintain a family’s state eligibility when they have defaulted on their Family Fee payment(s). All low-income families receive continuity through the program year, while Target Population families may receive continuity until the child reaches kindergarten, subject to funding availability.
ELS-City (Voucher)	Early Learning Scholarships for providers who serve low-income children under the age of 4 whose families need ECE services but for whom other state or federal subsidies are unavailable. Approved children receive full tuition reimbursement for at least a minimum of one program year, and Target Population families will be funded until the child reaches kindergarten, subject to funding availability.
ELS-City (Reserved)	Early Learning Scholarships for providers who have “Reserved” or assigned slots designated to serve Target Population families until the child reaches kindergarten, subject to funding availability.
ELS-City (Moderate)	Subject to funding availability, these Early Learning Scholarships are for providers who serve moderate income families with children under the age of 4 whose families need ECE services but who are not eligible for other state and federal subsidies and may not be able to afford the full cost of quality care. Families will be verified as moderate income – defined as above 85% of State Median Income and less than 110% of Area Median Income (for example, between \$42,215 and \$106,656 for a family of 3) – by the ECE Integrated Services Grantee(s).
ELS-Gap	Early Learning Scholarships for providers who have a “gap” between one or more state and/or federal subsidies and the cost of operating a program at the QRIS Tier 3 level.
ERS	Environmental Rating Scale designed to assess process quality in an early childhood setting.
ECE Integrated Services Grantee(s)	Non-profit grantee selected by OECE that cuts payment checks to OECE authorized Early Learning Scholarship and Preschool for All Centers and Family Child Care Homes.
HSA	San Francisco Human Services Agency
Low-Income	Families earning less than 85% of the State Median Income as determined by the California Department Education. (see Appendix C)
Low-Moderate Income	Families earning more than 85% of the State Median Income and at or below 110% of the Area Median Income. (see Appendix C)
OECE	Office of Early Care and Education
Program Year Continuity	Low-income families who lose state subsidy eligibility may continue in care until the end of the program year, typically prior to fall.

Quality Rating and Improvement System (QRIS)	A Quality Rating and Improvement System is a vehicle to organize early learning quality standards. QRIS is intended to measure and raise the level of quality of early learning programs by developing quality standards, providing quality improvement supports, and aligning disconnected systems. In 2011, California was awarded a federal grant to develop regional QRIS in 16 counties across California. San Francisco is a member of the <u>California Quality Rating and Improvement System</u> consortium.
QRIS State Quality Block Grant	CDE funded state stipends for quality in Title 5 contracted settings. Also the basis for a local program for non-state Grantees participating in the quality system.
Resource and Referral	Assisting parents in finding child care that best meets their family needs through the provision of robust, up-to-date information regarding licensed providers.
<u>SF3C</u>	San Francisco Child Care Connection – A centralized eligibility and waiting list will support to assist low-income families in connecting with quality subsidized early care and education options.
<u>San Francisco Citywide Plan for Early Care and Education</u>	The San Francisco Board of Supervisor approved Early Care and Education plan to align early education goals, frameworks, funding, and outcomes targeting children birth through age five.
Stacked Funding	Funding that is “stacked” from multiple funding sources (e.g., state, federal, local, etc.) to cover the program operating costs.
Target Population	Low-income African American children, low-income Latino children, low-income English Language Learners, families who are homeless, children at-risk of abuse and/or neglect or involved with the child welfare system, and children with identified special needs or disabilities. Low income is defined as a family’s income is at or below 85% of the State Median Income (see Appendix C).
Voucher	A voucher provides families with the ability to pay for child care at a program of their choosing. Providers qualified through this RFQ are eligible to receive an ELS rate (which is designed to “enhance” the state or federal voucher rate) to serve families with vouchers.

III. Target Population

The San Francisco early care and education (ECE) system is focused on serving the needs of 0-5 year olds with a focus on low-income families. OECE has adopted a particular emphasis on “Target Population” families which include: low-income African American children, low-income Latino children, low-income English Language Learners, families who are homeless, children at-risk of abuse and/or neglect or involved with the child welfare system, and children with identified special needs or disabilities. Low income is defined as a family’s income at or below 85% of the State Median Income.

IV. Description of Services

Grantee Wu Yee Children's Services shall support the work and activities of the Office of Early Care and Education by providing early care and education services to families with children in the target population as described in section III in combination with Early Head Start and/or Head Start Services.

In an attempt to maximize federal and state funding before spending local City funding OECE has created the following ELS funding streams. Several of the funding streams below augment federal and state funds already supporting licensed ECE providers. ELS funding streams provide enhanced rates to cover the cost of providing quality services at Tier 3 on the QRIS in San Francisco.

Each child can only be supported by one of the ELS funding streams at a time, therefore, WU YEE CHILDREN'S SERVICES can only apply one funding stream per projected child.

ELS EHS/HS – This funding is awarded to Wu Yee Children's Services for a specific Center or Family Child Care home to better meet the cost of providing quality EHS/HS services in San Francisco. OECE may award funding for each enrollment, up to the maximum rate indicated for each child, minus other federal or state funding available to support the enrollment. The federal and state funding streams considered to support an enrollment include: EHS/HS, California Department of Education, and food program funding.

Below is a description of the other Early Learning Scholarship (ELS) funding streams that EHS/HS Grantee may possibly use:

ELS – City (Reserved): This funding is “reserved” or assigned to a specific Center/Family Child Care home and is designated to support Target Population families. If an Early Head Start/Head Start is approved for ELS-City (Reserved) funding, the center must fill a “Reserved” slot with an eligible child, to receive full tuition reimbursement until the child reaches Kindergarten, subject to funding availability. ELS-City (Reserved) slots will be funded at the **ELS Center Rate**, which is based on the cost of providing quality services at Tier 3 on the QRIS.

EHS/HS grantee awarded ELS-City (Reserved) funding may be asked to enroll families from the centralized waiting and eligibility list (currently San Francisco Child Care Connection, or SF3C) to fill their ELS-City (Reserved) slots. Children at the time of their initial subsidy enrollment must be under the age of 4. OECE's ECE Integrated Services Grantee(s) may determine families' need and eligibility (e.g., low-income and employed, attending school or training, job search or incapacitated, etc.).

Families who are homeless, children at-risk of abuse and/or neglect or involved with the child welfare system (FCS), or children with identified special needs or disabilities will be prioritized for EHS/HS ELS-City (Reserved) funding.

ELS – City (Voucher): This funding provides a “portable” City funded voucher to low-income children under the age of 4 whose families need ECE services but for whom other

state or federal subsidies are unavailable. Approved children will receive full tuition reimbursement for at least a minimum of one program year, and Target Population families will be funded until the child reaches kindergarten, subject to funding availability.

ELS-City (Voucher) funded enrollments may not supplant state/federal funded slots. Families are selected for available ELS-City (Voucher) funding through the centralized waiting and eligibility list (currently SF3C). OECE's ECE Integrated Services Grantee(s) will determine families' need and eligibility (e.g., low-income and employed, attending school or training, job search or incapacitated, etc.). Approved families may then select and enroll in any Center or Family Child Care Home qualified and/or awarded funding through OECE's processes – if the provider has a vacancy. EHS/HS grantees selected by families will receive funding for enrolled eligible children at the Center Rate, which is based on the cost of providing quality services at Tier 3 on the QRIS.

Priority for this funding are families with a child under age 4 who are homeless or at-risk of abuse and/or neglect or involved with the child welfare (FCS) or have identified special needs or disabilities.

Note: Families *involved with the child welfare system or who are homeless* with a child under the age of 4 may also receive ELS-City (Voucher) funding for their older siblings through age 12 to receive care through an eligible provider.

ELS – City (Moderate): OECE is also interested in expanding, over time, ELS – City subsidies for low-moderate income families. Subject to funding availability, this funding is “reserved” or assigned to a specific center who serves low-moderate income families with children under the age of 4 whose families need ECE services, but who are not eligible for other state or federal subsidies, and are not able to afford the full cost of care. Families will be verified as low-moderate income - defined as above 85% of State Median Income and less than 110% of Area Median Income (*see appendix C*) - by the ECE Integrated Services Grantee(s). Approved children may receive Early Learning Scholarship support for at least a minimum of one program year.

ELS – Gap: This funding provides an enhanced rate to fill the gap between state and/or federal funding and the cost of providing quality services at Tier 3 on the QRIS in San Francisco. The gap funding amount per child will depend on the amount of the state and/or federal subsidies supporting that child.

The gap funding amount will be calculated by the following formula: the ELS Gap Rate will be calculated based on the ELS Center or ELS FCC rate **minus** the State Reimbursement Rate and applicable Child and Adult Food Program rate, or any combination (i.e., stacked funding) of those state/federal funding streams = ELS Gap funding amount. Gap funding for EHS/HS will apply to both licensed Center sites and qualified Family Child Care sites which have been approved through NOFA #746.

EHS/HS grantees awarded ELS-Gap funding must enroll families from their internal EHS/HS wait list to fill vacancies. Children supported by this funding must be between the ages of 0 and 5.

ELS – Bridge: This funding provides continuity of care, when approved by OECE, for families who lose their eligibility for local, state and/or federal subsidies. Centers serving children ages 0 to 5 years old who have lost their subsidy eligibility and that have been approved by OECE will be funded at the applicable ELS Rate, which is based on the cost of providing quality services at Tier 3 on the QRIS, for at least a minimum of one program year. Target Population families will be funded until the child reaches kindergarten if they do not regain eligibility for state or federal subsidies, subject to funding availability.

ELS Full-Day, Part-Day, Full-Year and Part-Year Definitions

ELS funding can be used for both full-day and part-day enrollments, and for both full-year and part-year enrollments. As noted below, ELS-GAP funding will use the definitions of full day, part day, full year and part year determined by the underlying subsidy. Below is a table that defines these terms:

For ELS-Gap funding used with a California Department of Education Title 5 Contract	
Full Day	6.5 -10.5 hours a day
Part Day	4- 6.4 hours a day
Full Year	At least 246 days a year
Part Year	At least 175 days a year
For ELS-Gap funding used with a State Voucher	
Full Day	30 hours per week
Part Day	Less than 30 hours per week
For ELS-City and ELS-Bridge	
Full Day	6.5 -10.5 hours a day
Part Day	3.5-6.4 hours a day
Full Year	At least 246 days a year
Part Year	At least 175 days a year

ELS Infant, Toddler, and Preschool Definitions:

- ELS EHS/HS will use the definitions of infant, toddler, and preschool used by the federal Head Start program.
- ELS-Gap funding will use the definitions of infant, toddler, and preschool age determined by the underlying State/Federal subsidy. For EHS/HS infants and toddlers are defined as children under the age of 3.
- ELS-City funding will use the following definitions of age groups:
 - Infant: ages 0 to 24 months
 - Toddler: more than 24 months to less than 36 months
 - Preschool: ages 3 to 5 years old

Rates

For EHS/HS grantees, OECE will determine funding amounts using the Early Learning Scholarship Early Head Start/Head Start Rates as a maximum amount per child. These rates were determined by an in-depth analysis of San Francisco Early Head Start/Head Start reimbursement rates and the cost of delivering high-quality Early Head Start/Head Start services. Due to the differences in EHS/HS grant federal reimbursement rates across federal grantees, the OECE funding amounts per child per federal grantee will be adjusted according to the awarded applicant’s federal base funding from Head Start and any other state and federal funding for each enrollment, such as CSPP part-day stacked with Head Start half day. All bridge funding will also be funded according to the EHS/HS rate.

The following maximum rates are established for EHS/HS grantees providing services in a center setting.

Early Learning Scholarship Early Head Start/Head Start Center Rates	
Infant	\$ 30,958
Toddler	\$ 30,958
Preschool (full year)	\$ 22,833
Preschool (full day, part year)	\$ 17,635
Preschool (part day, part year)	\$ 11,880

Funding applications for EHS services in Family Child Care homes will be considered at the ELS Family Child Care Rates based on the age of the child.

Below is a table of the rates for each applicable ELS funding stream, including rates for full day, part day, full year and part year.

Early Learning Scholarship Family Child Care Rates				
	Full day, Full Year	Full day, Part Year	Part day, Full Year	Part day, Part Year
Infant	\$20,707	\$14,731	\$11,389	\$8,102
Toddler	\$20,707	\$14,731	\$11,389	\$8,102
Preschooler	\$19,494	\$13,868	\$10,722	\$7,627

All other ELS funding streams to support enrollments beyond EHS/HS enrollments will be considered using the standard, applicable ELS rates, which are listed below.

Early Learning Scholarship Center Rates				
	Full Day, Full Year	Full Day, Part Year	Part Day, Full Year	Part Day, Part Year
Infant	\$27,496	\$19,560	\$15,123	\$10,758
Toddler	\$20,935	\$14,893	\$11,514	\$8,191
Preschooler	\$17,069	\$12,143	\$9,388	\$6,678

Annual Quality Grant Amounts:

This funding is an annual per child amount (calculated on subsidized enrollments) that is added to a Center’s OECE funding agreement if they are rated as Tier 4 or 5 on the QRIS.

One-Time, Per Child Amount	Tier 4	Tier 5
Infant/Toddler	\$ 300	\$ 330
Preschooler	\$ 200	\$ 220

Program Assurances

Below is a brief description of the program requirements EHS/HS grantee receiving ELS funding must agree to follow. For more detailed information on these program requirements, please refer to the OECE Program Operating Guidelines located at www.sfoece.org. To the extent possible, given EHS/HS federal program standards, OECE will seek to align and streamline reporting to reduce administrative burden and duplication.

Quality:

- 1. Curriculum** – Providers must utilize an evidenced-based curricula, which aligns with either the California Department of Education *Infant/Toddler Learning & Development Foundations*, California Department of Education *California Preschool Learning and Development Foundations (Volume 1 – 3)* (if serving preschool-age) and Head Start children), or the *Head Start Early Learning Outcomes Framework: Ages Birth to Five*.
- 2. Quality Improvement Plan** – Providers must develop and implement a Quality Improvement Plan, at each site, that incorporates analysis and reflection on child assessments, observations, and other data about the program.
- 3. Intentional Approach & Parent-Teacher Conferences** OECE requires Centers and Family Child Care providers to have an intentional approach to engage families and to hold at least two individual parent-teacher conferences each program year to discuss the child’s progress. OECE may require additional family engagement requirements that are developed in partnership with providers at a future date during the funding term. EHS/HS requirements, when applied to all enrollments, will meet this assurance.
- 4. Family Surveys** To help ensure that families’ needs are being met and that they have a formal mechanism to provide feedback to the Center, OECE requires to survey families of OECE-funded children if their program is selected. Each year different providers across the City will be randomly selected to participate.
- 5. No Faith-Based Teaching** Providers may not deliver any direct faith-based instruction during program time supported with OECE funds.
- 6. Quality Supports** Providers must participate in quality supports, such as training, coaching, and mental health consultation including, but not limited to, those provided by First 5 San Francisco and the San Francisco Department of Public Health.

Workforce and Compensation:

- 1. Compensation** – Given OECE’s commitment to supporting the ECE workforce and the recommendations in the Citywide Early Care and Education Plan, OECE suggests Centers pay at least the following minimum hourly wages for classroom staff, which was used to calculate the rates for the Early Learning Scholarship. The suggested ELS Classroom Staff Wage Minimums are based on job responsibilities and level of education, and Centers are encouraged to provide compensation higher than these suggested minimums.

ELS Classroom Staff Wage Minimums for FY 2017-18

Classroom Staff Role	Min. Education Level	Suggested Staff Wage Minimums
Assistant Teacher	6-11 ECE/CD units or Assistant Permit	\$14.00 or Minimum Wage*
Teacher/Co-Teacher Head/Lead Teacher Master Teacher	12-23 ECE/CD units or Associate Teacher Permit	\$15.78
Teacher/Co-Teacher Head/Lead Teacher	Teacher Permit or Unit Equivalent	\$17.53
Teacher/Co-Teacher Head/Lead Teacher	Master Teacher Permit or Unit Equivalent	\$19.28
Teacher/Co-Teacher Head/Lead Teacher	Site Supervisor Permit	\$21.04
Teacher/Co-Teacher Head/Lead Teacher	Program Director Permit or Unit Equivalent	\$22.79
Site Supervisor/Assistant Director	Site Supervisor Permit	\$26.30

*No Center receiving funding from the City can pay any staff member below the Minimum Compensation Ordinance.

OECE does not have suggested staff wage minimums for Family Child Care homes.

- 2. Staff Training** – OECE will provide orientation and training sessions and hold regular required Administrators Roundtable meetings each fiscal year to share critical information with Providers. OECE will also require three in-depth trainings on the following topics: Support for Dual Language Learners, Inclusion and Meeting the Needs of Young Children with Disabilities or Other Special Needs, and Family Engagement and Support.
- 3. Registry** – Grantee will register all staff at least annually in the CA Workforce Registry.

Enrollments:

1. **Residency Requirement** Children funded by the Early Learning Scholarship or Preschool for All must be a San Francisco resident during the time that they are enrolled in the funded program, except for Title 5 participants.
2. **Filling Child Vacancies** – EHS/HS grantees are permitted to fill EHS/HS vacancies per their federal contract requirements.
3. **Enrollment Recordkeeping** – Providers shall establish and maintain a basic file for each family receiving Early Learning Scholarship or PFA funding. EHS/HS requirements will fulfill this program assurance.
4. **Child Attendance Recordkeeping** – All centers receiving Early Learning Scholarship funding shall maintain electronic enrollment and attendance records for **all** children using the Cocoa database and its electronic sign in and sign out features or using a similar database that will be able to sync into COCOA OECE will provide technical assistance and a limited amount of start-up funding to purchase tablets, security devices, and equipment to enhance Wi-Fi connections. All Family Child Care homes receiving Early Learning Scholarship funding shall maintain electronic enrollment and attendance records for **all** children using a database that will be able to sync with a database designated by OECE in January 2018.
5. **Child Attendance Policy** OECE-funded children are allowed up to 10 days of non-attendance that is excused (vacation, leave, “best interest of child”) during the fiscal Year.
6. **Forms** Providers must gather completed OECE Data Acknowledgement forms for every child in their program and OECE Family Agreement forms for each child supported by OECE. Completed forms should be kept in each child’s EHS/HS file.
7. **Nondiscrimination Policy** Providers must have a written enrollment policy that includes language about not discriminating against any child or his or her parent(s) on the basis of race, color, national origin, sex, sexual orientation, religion or disability.
8. **Children with Disabilities and Special Needs** Providers will make reasonable accommodations for children identified as eligible for special education and/or related services under the Individuals with Disabilities Act (IDEA) and the Americans with Disabilities Act (ADA).

State/Federal funding:

1. Grantee is required to ensure maximum use of their state and federal contract funding, while also working with OECE (through the ELS-Bridge approval process) to ensure continuity for children who subsequently become ineligible for state and/or federal funding and receive ELS-Bridge.

Other Requirements:

1. **Annual Financial Audit** – Grantee shall be required to submit a financial audit to OECE on an annual basis.
2. **Program Evaluation** – Grantee shall participate in OECE-sponsored evaluation activities aimed at better understanding the impact of City-funded programs.
3. **OECE Logo** –Grantee shall be required to use an approved OECE logo in all materials used to market OECE-funded programs, including brochures, websites, flyers, banners, and advertisements.

V. Location and Time of Services

All services provided under this contract will be provided at Wu Yee Children's Services operated child care centers in San Francisco. The child development programs operated by the Grantee must offer services to families from 8:00am – 5:00pm Monday through Friday, excluding all the legal holidays and Staff Enrichment and Staff meeting days as reported to OECE by the Grantee.

VI. Service Objectives

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

- A. Provide Early Care and Education Services to an unduplicated count of 409 children each year at child care centers operated by the Grantee, ensuring that the children enrolled meet either Head Start target demographics or the definition of OECE's Target Population (Described in Section III of this Appendix A)
- B. Maximize the utilization of at least 100% of Federal and 85% of State child development funding through the enrollment of eligible children into EHS-HS services.
- C. 100% of families with a disruption in State or Federal funded care and eligible for ELS-Bridge will be recertified at least every quarter to re-engage in State or Federal funded programs.
- D. Wu Yee Children's Services will develop and implement a Quality Improvement Plan that incorporates analysis and reflection on child assessments, observations and other data about the program at all the sites it operates.
- E. Grantee will develop and implement an intentional approach to engage families and hold at least two individual parent-teacher conferences each program year to discuss the child's progress.
- F. 100% of families will be offered the annual satisfaction survey.
- G. Grantee will participate in quality supports, such as training, coaching and mental health consultation including, but not limited to, those provided by First 5 San Francisco and the San Francisco Department of Public Health.
- H. Grantee will report 100% of enrollments funded by OECE in the enrollment database used by OECE (cocoa) to maintain electronic enrollment and attendance records for all children, including sign in and sign out features.

- I. Grantee will use SF3C database to fill subsidized vacancies for enrollments that are not EHS-HS slots. All EHS/HS enrollments will be filled by Wu Yee's own waitlist that meets federal and state guidelines.
- J. Wu Yee's EHS FCC programs will be funded an additional monthly stipend per child, in addition to the ELS rate. This stipend is to support EHS FCC providers with the additional requirements of operating an EHS program and to assist with the recruitment of additional providers to join EHS.

VII. Outcome Objectives

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

- A. At least 90% of children enrolled at Grantee's child care centers will have a blended federal and state funding during the term of their enrollment.
- B. Of families responding to a family survey, a minimum of 85% will rate the program as being supportive to helping their family meet their child's ECE needs.

VIII. Reporting Requirements

- A. Grantee will provide a quarterly report of activities, referencing the tasks as described in Section IV– Description of Services, and VII- Service Objectives. Reports are due 15 days after the close of the reporting period. Following reports will be acceptable to report quarterly enrollments, activities and tasks:
 - I. Agency's Head Start-Early Head Start Services Annual Program Information Report Snapshot,
 - II. Grantee's Head Start 09CH9147 "End-of-Month Enrollment" Report,
 - III. Excel exported CDD-801 A report,
- B. Grantee will provide an annual narrative report and/or CDE Self Evaluation summary summarizing the contract activities, referencing the tasks as described in Section IV– Description of Services, VII- Service Objectives, and VIII - Outcome Objectives. This report will also include accomplishments and challenges encountered by the Grantee. This report is due 15 days after the completion of the program year.
 - A. Quarterly and Annual Reports, including a quarterly narrative report will be entered into the Contracts Administration, Reporting, and Billing Online (CARBON) system.
- C. Grantee will provide Ad Hoc reports as required by the Department.
- D. Quarterly and Annual Reports will be entered into the Contracts Administration, Reporting, and Billing Online (CARBON) system.

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

elizabeth.leone@sfgov.org
Contracts Manager, Office of Contract Management

or

armando.zapote@sfgov.org
Office of Early Care and Education
ECE Program and Policy Analyst

IX. Monitoring Activities

- A. Program Monitoring: Grantee will meet with OECE -ECE Program and Policy Analyst each quarter to review and develop enrollment-funding blending strategies that support:
 - a. OECE's emphasis on serving "Target Population" families,
 - b. Efforts to maximize federal and state funding before spending local city funding,
 - c. Grantee's enrollment and eligibility list process and procedures.
 - d. Grantee's achievements and challenges in providing services through the ELS-EHS/HS contract.

- B. OECE's program monitoring will also include review of client eligibility, and back-up documentation to assess and determine level of support needed for effective reporting and progress towards meeting service and outcome objectives.
 - a. Cocoa usage/enrollment reports
 - b. SF3C Usage/enrollment reports

- C. Fiscal Compliance and Contract Monitoring: Fiscal monitoring will include review of the Grantee's organizational budget, the general ledger, quarterly balance sheet, cost allocation procedures and plan, State and Federal tax forms, audited financial statement, fiscal policy manual, supporting documentation for selected invoices, cash receipts and disbursement journals. The compliance monitoring will include review of Personnel Manual, Emergency Operations Plan, Compliance with the Americans with Disabilities Act, subcontracts, and MOUs, and the current board roster and selected board minutes for compliance with the Sunshine Ordinance.

	A	B	C	D	E
1	Appendix B, Page 1				
2					
3	HUMAN SERVICES AGENCY BUDGET SUMMARY				
4	BY PROGRAM				
5	Name			Term	
6	Wu Yee Children's Services			7/1/2017 - 6/30/2019	
7	(Check One) New <input checked="" type="checkbox"/> Renewal ___ Modification ___				
8	If modification, Effective Date of Mod. No. of Mod.				
9	Program: Early Head Start/Head Start				
10	Budget Reference Page No.(s)	EHS-HS	EHS-HS		
11	Program Term	FY 17-18	FY 18-19		Total
12	Expenditures				
13	Salaries & Benefits	\$2,394,830	\$2,394,830	\$0	\$4,789,660
14	Operating Expense	\$600,371	\$600,371	\$0	\$1,200,743
15	Subtotal	\$2,995,202	\$2,995,202	\$0	\$5,990,403
16	Indirect Percentage (%)	15%	15%	15%	\$0
17	Indirect Cost (Line 16 X Line 15)	\$449,280	\$449,280	\$0	\$898,560
18	Capital Expenditure	\$0	\$0	\$0	\$0
19	Subtotal w/o Pass-Through	\$3,444,482	\$3,444,482	\$0	\$6,888,964
20	Direct Client Pass-Through	\$39,392	\$39,392	\$0	\$78,784
21	Total Expenditures	\$3,483,874	\$3,483,874	\$0	\$6,967,748
22	HSA Revenues				
23	ELS EHS/HS	\$2,608,892	\$2,608,892		\$5,217,784
24	ELS GAP	\$662,912	\$662,912		\$1,325,824
25	Quality Grants	\$96,870	\$96,870		\$193,740
26	FCCNetwork	\$115,200	\$115,200		\$230,400
27					
28					
29					
30	TOTAL HSA REVENUES	\$3,483,874	\$3,483,874	\$0	\$6,967,748
31	Other Revenues				
32					
33					
34					
35					
36					
37	Total Revenues	\$0			\$0
38	Full Time Equivalent (FTE)	40.47	40.47	40.47	
40	Prepared by: Heather Hall	Telephone No.: (415) 230-7529		Date 7/25/17	
41	HSA-CO Review Signature: _____				
42	HSA #1				10/25/2016

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Program Name: Early Head Start/ Head Start Programs
(Same as Line 9 on HSA #1)

Operating Expense Detail

Expenditure Category (* see Cost Allocation detail on Budget Summary page)	TERM	FY 17-18	FY 18-19	TOTAL
RENTAL OF PROPERTY		\$190,792	\$190,792	\$381,584
Utilities(Elec, Water, Gas, Phone, Scavenger)		\$24,078	\$24,078	\$48,157
Office Supplies, Postage				\$0
Building Maintenance Supplies		\$40,131	\$40,131	\$80,262
Printing and Reproduction		\$20,117	\$20,117	\$40,233
Insurance		\$0	\$0	\$0
STAFF TRAINING		\$23,741	\$23,741	\$47,483
Staff Travel-(Local & Out of Town)		\$0	\$0	\$0
Rental of Equipment		\$0	\$0	\$0
CONSULTANT/SUBCONTRACTOR DESCRIPTIVE TITLE				
SUBSTITUTE TEACHER POOL		\$91,613	\$91,613	\$183,227
				\$0
				\$0
				\$0
				\$0
OTHER				
PARENT ACTIVITIES		\$10,760	\$10,760	\$21,520
CLASSROOM SUPPLIES		\$25,547	\$25,547	\$51,094
CLASSROOM ACTIVITIES		\$29,196	\$29,196	\$58,392
CURRICULUM SUPPORT		\$29,196	\$29,196	\$58,392
				\$0
EHS Stipends to FCCH Providers		\$115,200	\$115,200	\$230,400
TOTAL OPERATING EXPENSE		\$600,371	\$600,371	\$1,200,743
HSA #3				10/25/2016

Appendix C – Method of Payment

- I. In accordance with Section 5 of the Grant Agreement, payments shall be made for actual costs incurred and reported for each month. Under no circumstances shall payment exceed the amount set forth in Section 5 Compensation of the Agreement.
- II. Grantee will submit all bills, invoices and related documentation in the format specified by SFHSA within 15 days after the month of service to SFHSA's web-based Contracts Administration, Reporting, and Billing Online (CARBON) System at: <https://contracts.sfhsa.org>

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

rendered, except as stated otherwise. Supporting documentation must be uploaded into CARBON and submitted along with the invoice.

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

Funding Agency: Federal _____ CFDA or other Identification #: _____
1. _____
2. _____
3. _____
4. _____

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

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

1. All contractual compliance requirements must be current, i.e., reports submitted and approved, corrective actions resolved, business tax and insurance certificates in place, prompt and fully documented billings.
2. The Grantee shall submit a written request with a narrative justification that fully describes the unique circumstances to the Program Manager and Contract Manager for review and approval.
3. Final invoice from the preceding fiscal year must be received prior to advance distribution.

IX. Timely Submission of Reports – If reports/documents are required, Grantee shall submit these reports prior to submitting invoices. Failure to submit required reports/documents in CARBON by specified deadlines may result in withholding of grant payments.

Appendix D – Interests In Other City Grants

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

City Department or Commission	Date of Contract	Amount of Contract
Office of Early Care and Education	7/1/17 – 6/30/18	\$ 9,703,831
Office of Early Care and Education	7/1/17 – 6/30/18	\$ 823,279
First5 San Francisco	7/1/17 – 6/30/18	\$ 309,000
Mayor's Office of Housing and Community Development	7/1/17 – 6/30/18	\$ 45,000
Mayor's Office of Housing and Community Development	7/1/17 – 6/30/18	\$ 150,000
Mayor's Office of Housing and Community Development	7/1/17 – 6/30/18	\$ 110,315

Appendix E-Permitted Subcontractors

NONE