

File No. 220705

Committee Item No. \_\_\_\_\_

Board Item No. 7

# COMMITTEE/BOARD OF SUPERVISORS

## AGENDA PACKET CONTENTS LIST

Committee: \_\_\_\_\_

Date: \_\_\_\_\_

Board of Supervisors Meeting

Date: June 28, 2022

### Cmte Board

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- Budget and Legislative Analyst Report
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- Form 126 – Ethics Commission
- Award Letter
- Application
- Public Correspondence

### OTHER

- Draft Grant Agreement \_\_\_\_\_
- Presidential Action Memo - 6/9/22 \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

Prepared by: Lisa Lew

Date: June 10, 2022

Prepared by: Lisa Lew

Date: June 24, 2022

1 [Grant Agreement for Financial Solvency - Baker Places, Inc. - Not to Exceed  
2 \$1,210,000450,000 - Waiver of Competitive Solicitation Requirement]

3 **Ordinance authorizing the Department of Public Health to award a one-time, limited**  
4 **term grant to Baker Places, Inc. (“Baker”), without engaging in the competitive**  
5 **solicitation process otherwise required by the Administrative Code for grants, for the**  
6 **purpose of maintaining the financial solvency of Baker’s staffing, and preventing**  
7 **displacement of residents, in an amount not to exceed \$1,210,000450,000 for a not to**  
8 **exceed one-year period to commence on July 1, 2022, through June 30, 2023.**

9  
10 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
11 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
12 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.  
13 **Board amendment additions** are in double-underlined Arial font.  
14 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
15 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
16 subsections or parts of tables.

15 Be it ordained by the People of the City and County of San Francisco:

16 Section 1. Background.

17 (a) Baker Places, Inc. (“Baker”) is a nonprofit organization that provides services to  
18 adults with mental health, substance abuse, and HIV-related health issues. Baker currently  
19 has nine contracts with three City departments, including the Department of Public Health (the  
20 “Department”), totaling approximately \$97,000,000 on contract awards with remaining  
21 balances of approximately \$40,000,000. Under the terms of its contracts with the  
22 Department, Baker provides urgently needed residential substance use and mental health  
23 treatment services to members of the public in support of the Department and other City  
24 agencies. These services are a critical component of behavioral and mental health services  
25 in San Francisco.

1 (b) Beginning in December 2021, Baker notified the Department that it was  
2 experiencing a significant cash flow crisis. Baker reported to the Department that unless it  
3 receives immediate stopgap funding from the City or another entity, it may face imminent risk  
4 of closure as a result of financial insolvency. In February 2022, the Controller's Office began  
5 a financial analysis of Baker that identified projected deficits as a result of spending in excess  
6 of contracted amounts totaling \$1,210,000. As a result of this deficit, Baker has been unable  
7 to meet its payroll, lease, and other obligations and is at risk of insolvency. If Baker closes,  
8 the Department would lose more than 200 beds available for substance use and mental  
9 health treatment services.

10 (c) The Department and the Controller propose to provide short-term funding to  
11 enable Baker to complete and implement a financial and business plan to assure the City of  
12 the stability of Baker's programs under its contracts with the Department and other City  
13 agencies. In light of the unique circumstances and the time-sensitivity of the need, the  
14 Department seeks to award this grant without a competitive solicitation process otherwise  
15 required by Administrative Code Chapter 21G. A true and correct copy of the proposed grant  
16 agreement is in Board File No. 220705.

17 (d) In the Annual Appropriations Ordinance for Fiscal Year 2021-2022 fiscal year,  
18 the Board of Supervisors has appropriated funds to the Department sufficient to cover the  
19 amount of the proposed grant.

20 Section 2. Authorization to Enter Sole-Source Grant Agreement. The Board of  
21 Supervisors hereby authorizes the Department to award a grant to Baker in the amount not to  
22 exceed ~~\$1,210,000~~450,000, for a term not to exceed one year, for the purpose of maintaining  
23 Baker's ~~financial solvency, staffing, and preventing the immediate displacement of residents.~~  
24 Within 30 days of the agreement being fully executed by all parties, the Department shall  
25



**CITY AND COUNTY OF SAN FRANCISCO**

**BOARD OF SUPERVISORS**

**BUDGET AND LEGISLATIVE ANALYST**

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

June 10, 2022

**TO:** Board of Supervisors

**FROM:** Budget and Legislative Analyst



**SUBJECT:** June 14, 2022 Committee of the Whole Adjourn and Report

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|             | 22-0705 Grant Agreement for Financial Solvency - Baker Places, Inc. - Not to<br>Exceed 1,210,000 - Waiver of Competitive Solicitation Requirement ..... | 1           |

**Items 64 & 65**  
**Files 22-0704 & 22-0705**

**Department:**  
 Public Health

## EXECUTIVE SUMMARY

### Legislative Objectives

- File 22-0705 would approve a \$1,210,000 sole source grant agreement for Baker Places and File 22-0704 would approve a \$2,010,000 sole source grant agreement for Positive Resource Center. Each agreement will have a one-year term.

### Key Points

- The Positive Resource Center, a non-profit, provides emergency financial assistance, benefits advocacy, HIV outreach, and workforce development programs as well as administrative support to Baker Places. Baker Places, a non-profit, operates substance abuse treatment programs, mental health treatment programs, as well as shelter and housing programs. Baker Places provides 215 beds across its treatment and housing programs.
- Both Baker Places and the Positive Resource Center will exceed their FY 2021-22 DPH-funded budget for several programs by \$3.22 million, or 13 percent of the annual budget.
- Under the grant agreements, the City will retain an independent consultant to evaluate each organization's financial condition and develop a financial sustainability plan, subject to City approval, to ensure ongoing operation of City-funded programs. Each organization will also be required to provide audited financial statements back through FY 2017-18.

### Fiscal Impact

- The total funding required for both grant agreements is \$3.22 million, which will be sourced from the current year savings in DPH's General Fund budget.

### Policy Consideration

- The City contracts with 600 nonprofits at an annual cost of \$1.2 billion. If all these providers overspent their budget by 13 percent, as is the case with Baker Places and Positive Resource Center, the annual cost to the City would be \$155.9 million.
- DPH began providing Positive Resource Center technical assistance in July 2020. Despite the technical assistance and ongoing financial monitoring, Positive Resource Center informed DPH that it was at risk of insolvency in December 2021. DPH began preparing a plan of action, however the scale of the overspending now requires a bailout of both agencies while financial sustainability plans are developed over the next year.

### Recommendations

1. Request Public Health provide the Board of Supervisors the financial stability reports that are required for each grant agreement and include them in the legislative files for these items.
2. Approval of the proposed ordinances is a policy matter for the Board of Supervisors.

## MANDATE STATEMENT

City Charter Section 2.105 states that the Board of Supervisors shall only act by ordinance or by resolution.

## BACKGROUND

### Positive Resource Center

The Positive Resource Center, a non-profit, provides emergency financial assistance, benefits advocacy, HIV outreach, and workforce development programs. The City has 16 contracts that total \$41,993,891 for these programs with terms that vary but up to July 2026. The provider also has contracts with the California Department of Rehabilitation and U.S. Department of Health and Human Services.

Through an Affiliation Agreement, Positive Resource Center is the sole corporate member of Baker Places, Inc. Positive Resource Center and Baker Places are in the process of merging and currently operate under a Management Service Agreement, by which Positive Resource Center provides Baker Places administrative, finance, human resource, fundraising, and information technology services.

### Baker Places

Baker Places, a non-profit, operates substance abuse treatment programs, mental health treatment programs, as well as shelter and housing programs, including:

- Detox Programs (Joe Healy)
- Residential Treatment (Baker Street House, Robertson Place, Jo Ruffin Place, San Jose Place, Ferguson Place, Acceptance Place and Grove Street)
- Psychiatric Respite (Hummingbird General Hospital)
- Navigation Center/Psychiatric Respite (Hummingbird Valencia Street)
- Permanent Supportive Housing (Odyssey House)
- Scattered Site Transitional Housing (Assisted Independent Living Program)

Exhibit 1 below summarizes the DPH contract amounts and terms for the programs above.

**Exhibit 1: Baker Places DPH Contracts**

| <b>Program</b>                           | <b>Beds</b> | <b>Clients</b> | <b>FY 2021-22 Cost</b> | <b>Current Term</b> | <b>Total Contract</b> |
|--|-------------|----------------|------------------------|---------------------|-----------------------|
| Detox, Residential, Housing              | 144         | 821            | \$13,768,462           | 6/2018 - 6/2022     | \$55,475,141          |
| Ferguson Place                           | 12          | 6              | \$1,605,434            | 7/2021 - 7/2023     | \$3,658,739           |
| Hummingbird General Hospital             | 29          | 505            | \$3,324,177            | 1/2019 - 7/2026     | \$27,233,566          |
| Hummingbird Valencia (Navigation Center) | 30          | 644            | \$2,993,013            | 3/2020 - 1/2023     | \$9,540,278           |
| <b>Subtotal, Baker Places</b>            | <b>215</b>  | <b>1,976</b>   | <b>\$21,691,086</b>    |                     | <b>\$95,907,724</b>   |

Source: DPH and BLA analysis of existing contracts.

Note: Baker Places also has two contracts with the Mayor's Office and two with the Human Services Agency with a combined total of approximately \$650,000. The costs above do not include City funded leases such as, for example, the City-funded lease at 1156 Valencia Street for the Hummingbird Navigation Center, which will cost the City \$1.5 million over three years through February 2023 (20-0115).

As shown above, Baker Places provides 215 beds across its treatment and housing programs and holds City contracts with DPH totaling \$21.7 million per year with a combined total not to exceed amount of \$95.9 million.

In May 2022, the Board of Supervisors approved an amendment that extended the Baker Places detox, residential, and housing contract from June 2022 to June 2027 and increased the not to exceed amount to \$120,789,738 (File 22-0414). According to Drew Murrell, DPH Deputy Finance Officer, the Department proposed the continuation of this contract because the contract was expiring June 30, 2022 and these are critical ongoing services, mostly at full capacity, serving individuals in active treatment.

**Overspending**

Both Baker Places and the Positive Resource Center will exceed the DPH allocated budget for several of the programs supported in their City contracts prior to the end of the FY 2021-22. DPH attempted to address the pending cash flow crisis starting in December 2021 by converting contracts from fee for service to cost reimbursement thereby allowing the agency to access all available budgeted funding to cover their programmatic costs, regardless of service delivery levels, and added \$800,000 to offset the additional expenses that PRC identified that it was incurring beyond the DPH contracted budgets for these programs. Additionally, DPH delayed repayment prior year audit obligations stemming from billing errors at Baker Places during FY 2015-16; however, the scale of both agencies' overspending across multiple contracts and programs requires \$3.22 million to avoid insolvency. Exhibit 2 below shows the estimated overspending.



**Exhibit 2: Estimated Overspending**

| <b>Baker Places</b>           | <b>FY 2021-22<br/>Budget</b> | <b>Estimated<br/>Overspending</b> | <b>Percent of<br/>Annual<br/>Budget</b> |
|-------------------------------|------------------------------|-----------------------------------|---|
| Detox, Residential, & Housing | \$13,768,462                 | \$861,147                         | 6.3%                                    |
| Hummingbird General Hospital  | \$3,324,177                  | \$24,660                          | 0.7%                                    |
| Ferguson Place                | \$1,605,434                  | \$327,350                         | 20.4%                                   |
| Subtotal, Baker Places        | \$18,698,073                 | \$1,213,158                       | 6.5%                                    |
| Positive Resource Center      | \$6,117,575                  | \$2,011,534                       | 32.9%                                   |
| <b>Total</b>                  | <b>\$24,815,648</b>          | <b>\$3,224,692</b>                | <b>13.0%</b>                            |

Source: Controller

Note: The Baker Places Hummingbird Navigation Center is not expected to overspend its budget and so is not included in the table above.

As shown above, Baker Places is projected to overspend its contracts by combined total of \$1.2 million and Positive Resource Center is projected to overspend its contracts by \$2.0 million. Overspending is approximately 13 percent of the annual budget of combined annual budget for these contracts. A June 10, 2022 memo from Community Vision, a consultant hired by the Controller's Office, notes that the overspending is due to spending that exceeds budgeted costs for units of service, higher than budgeted staffing costs, as well as turnover and low staffing levels in the financial divisions of each organization.

### DETAILS OF PROPOSED LEGISLATION

File 22-0705 would approve a \$1,210,000 sole source grant agreement for Baker Places and File 22-0704 would approve a \$2,010,000 sole source grant agreement for Positive Resource Center. Each agreement will have a one-year term.

#### Milestone Payments

The grant agreements are structured to provide payments based on certain milestones, as summarized in Exhibit 3 below.

#### Exhibit 3: Milestone Payments

| <b>Deliverable</b>                                     | <b>Baker<br/>Places</b> | <b>Positive<br/>Resource<br/>Center</b> | <b>Total</b>       |
|--|-------------------------|---|--------------------|
| Effective Date (40%)                                   | \$484,000               | \$804,000                               | \$1,288,000        |
| First Draft of Financial Sustainability Plan (30%)     | \$363,000               | \$603,000                               | \$966,000          |
| Final Financial Sustainability Plan (20%)              | \$242,000               | \$402,000                               | \$644,000          |
| Final Acceptance by the City of all Deliverables (10%) | \$121,000               | \$201,000                               | \$322,000          |
| <b>Total</b>   | <b>\$1,210,000</b>      | <b>\$2,010,000</b>                      | <b>\$3,220,000</b> |

Source: Proposed Grant Agreements

According to the proposed grant agreements, the City will retain an independent consultant to evaluate each organization's financial condition and develop a financial sustainability plan, subject to City approval, to ensure ongoing operation of City-funded programs at a cost of approximately \$10,000 per organization. Each organization will also be required to provide audited financial statements back through FY 2017-18.

### **FISCAL IMPACT**

The total funding required for both grant agreements is \$3.22 million, which will be sourced from the current year savings in DPH's General Fund budget.

### **POLICY CONSIDERATION**

#### **Policy Precedent**

According to the Controller's Office May 2022 Findings and Recommendations for Addressing Nonprofit Wage Pressures, the City contracts with 600 nonprofits at an annual cost of \$1.2 billion. If all these providers overspent their budget by 13 percent, as is the case with Baker Places and Positive Resource Center, the annual cost to the City would be \$155.9 million.

According to DPH, funding the overspending at Positive Resource Center and Baker Places will ensure mental health and substance abuse treatment programs, supported housing, and other programs remain available while the organization attempts to achieve financial stability. Additionally, the continuation of these contracts while a long-term solution is developed with these organizations preserves the existing licenses and State certifications necessary to operate from each unique facility location, which is required for State and Federal reimbursement.

#### **Contract Monitoring**

DPH is responsible for completing performance monitoring of its contracts, which evaluates services, and financial monitoring, which evaluates financial activities of contractors. In FY 2019-20, staff from the DPH Business Office of Contract Compliance completed a desk audit on program performance, performance objectives, program compliance, and client satisfaction. The reviews found that contracted performance objectives were generally met. Consistent with the Controller's guidance regarding non-profit suppliers, there was no performance monitoring in FY 2020-21 or FY 2021-22. A review of FY 2021-22 performance is expected in FY 2022-23.

The FY 2018-19 audited financial statement for Positive Resource Center showed the agency was at risk of not meeting all its financial obligations. The City offered and Positive Resource Center accepted technical assistance beginning in July 2020 including a program feasibility review, cost of service model templates, and analytical support. Technical assistance continued through September 2021, when the Controller's Office began evaluating the financial condition of both agencies. DPH continued to review financial statements for both organizations but did not complete monitoring reports in FY 2019-20 and FY 2020-21.

Despite the technical assistance and ongoing monitoring, Positive Resource Center informed DPH that it was at risk of insolvency in December 2021. DPH began preparing a plan of action, however the scale of the overspending now requires a bailout of both agencies while financial sustainability plans are developed over the next year.

### **RECOMMENDATIONS**

1. Request that Public Health provide the Board of Supervisors the financial stability reports that are required for each grant agreement and include them in the legislative files for these items.
2. Approval of the proposed ordinances is a policy matter for the Board of Supervisors.

**CITY AND COUNTY OF SAN FRANCISCO  
DEPARTMENT OF PUBLIC HEALTH**

**GRANT AGREEMENT**

between

CITY AND COUNTY OF SAN FRANCISCO

and

**BAKER PLACES, INC.**

**Contract ID# 1000025431**

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This grant agreement (“Agreement”) is made as of July 1, 2022, in the City and County of San Francisco, State of California, by and between Baker Places, Inc. (“Grantee”) and the City and County of San Francisco, a municipal corporation (“City”) acting by and through Department Of Public Health (“Department”),

## RECITALS

**WHEREAS**, Grantee has applied to the Department for a grant to fund the matters set forth in a grant plan; and summarized briefly as follows:

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

**WHEREAS**, the City’s San Francisco Board of Supervisors approved this Grant by ordinance number \_\_\_\_\_ on \_\_\_\_\_.

**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 acknowledged, the parties 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) “**Budget**” shall mean the budget attached hereto as part of Appendix B.
- (b) “**Charter**” shall mean the Charter of City.
- (c) “**Controller**” shall mean the Controller of City.
- (d) “**Grant**” shall mean this Agreement.
- (e) “**Grant Funds**” shall mean any and all funds allocated or disbursed to Grantee under this Agreement.

**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 Department. The terms “sufficient,” “necessary” or “proper” and similar terms shall mean sufficient, necessary or proper in the sole judgment of the Department. The terms “approval,” “acceptable” or “satisfactory” or similar terms shall mean approved by, or acceptable to, or satisfactory to the Department. 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.

## ARTICLE 2 - APPROPRIATION AND CERTIFICATION OF GRANT FUNDS

**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.** Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

**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.

**2.5 Maximum Costs.** 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 provided by Grantee that are beyond the scope of the services, materials, equipment and supplies agreed upon herein and not approved by a written amendment to this Agreement lawfully executed by City. City and its employees and officers are not authorized to offer or promise to Grantee additional funding for this Agreement that exceeds 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.

### 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 Department has notified Grantee thereof in writing.

**3.2 Duration of Term.** The term of this Agreement shall commence on July 1<sup>st</sup>, 2022 and expire on June 30, 2023, unless extended by formal modification of this Agreement executed and approved in the same manner as the original.

### ARTICLE 4 - IMPLEMENTATION OF GRANT PLAN

**4.1 Implementation of Grant Plan; Cooperation with Monitoring.** Grantee shall diligently and in good faith implement the Grant Plan on the terms and conditions set forth in this Agreement and, to the extent that they do not differ from this Agreement, 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.

(a) **Qualified Personnel.** The Grant Plan shall be implemented only by competent personnel under the direction and supervision of Grantee.

(b) **Grantor Vaccination Policy.**

1. Grantee acknowledges that it has read the requirements of the 38th Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency (“Emergency Declaration”), dated February 25, 2020, and the Contractor Vaccination Policy for City Contractors and Grantees issued by the City Administrator (“Contractor Vaccination Policy”), as those documents may be amended from time to time. A copy of the Contractor Vaccination Policy can be found at: <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors>.

2. A Contract or Grant subject to the Emergency Declaration is an agreement between the City and any other entity or individual and any subcontract under such agreement, where Covered Employees of the Contractor/Grantee or Subcontractor work in-person with City employees in connection with the work or services performed under the agreement at a City owned, leased, or controlled facility. Such agreements include, but are not limited to, professional services contracts, general services contracts, public works contracts, and grants. Contract or Grant includes such agreements currently in place or entered into during the term of the Emergency Declaration. Contract or Grant does not include an agreement with a state or federal governmental entity or agreements that do not involve the City paying or receiving funds.

3. In accordance with the Contractor Vaccination Policy, Grantee agrees that:

(i) Where applicable, Grantee shall ensure it complies with the requirements of the Contractor Vaccination Policy pertaining to Covered Employees, as they are defined under the Emergency Declaration and the Contractor Vaccination Policy, and insure such Covered Employees are either fully vaccinated for COVID-19 or obtain from Grantee an exemption based on medical or religious grounds; and

(ii) If Grantee grants Covered Employees an exemption based on medical or religious grounds, Grantee will promptly notify City by completing and submitting the Covered Employees Granted Exemptions Form (“Exemptions Form”), which can be found at <https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors> (navigate to “Exemptions” to download the form).

4. The City reserves the right to impose a more stringent COVID-19 vaccination policy for the San Francisco Department of Public Health, acting in its sole discretion.

**4.3 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.

**4.4 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 Grant.

#### **4.5 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 Department. Except as set forth in this subsection, Grantee shall not use the name of the Department or City (as a reference to the municipal corporation as opposed to location) in any Publication without prior written approval of City.

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

**5.1 Maximum Amount of Grant Funds.** In no event shall the amount of Grant Funds disbursed hereunder exceed **ONE MILLION TWO HUNDRED TEN THOUSAND DOLLARS (\$1,210,000)**.

**5.2 Use of Grant Funds.** Grantee shall use the Grant Funds only for Eligible Expenses as set forth in Appendix A and for no other purpose. Grantee shall expend the Grant Funds in accordance with the Budget and shall obtain the prior approval of City before transferring expenditures from one line item to another within the Budget.

**5.3 Disbursement Procedures. (Reserved)**

**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 all or any portion of the disallowed amount against any other payment due to Grantee hereunder or under 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) **Grant Terms.** The funding for this Agreement is provided in full or in part by a Federal or State Grant to the City. As part of the terms of receiving the funds, the City is required to incorporate some of the terms into this Agreement and include certain reporting requirements.

#### **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 Department, in form and substance satisfactory to the Department. 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, 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.** Pursuant to San Francisco Administrative Code Section 67.32 and Controller requirements, if requested, 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.

**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 Audit and Inspection of Records.** Grantee agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Grant Plan. Grantee will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered in this Agreement, whether funded in whole or in part under this Agreement. Grantee shall maintain such data and records in an accessible location and condition for a period of not fewer than five years, unless required for a longer duration due to Federal, State, or local requirements of which the City will notify Grantee in writing, after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Grantee shall include the same audit and inspection rights and record retention requirements in all subcontracts.

**6.7 Submitting False Claims** Grantee shall at all times deal in good faith with the City, shall only submit a Funding Request to the City upon a good faith and honest determination that the funds sought are for Eligible Expenses under the Grant, and shall only use Grant Funds for payment of Eligible Expenses as set forth in Appendix A. Any Grantee who commits any of the following false acts shall be liable to the City for three times the amount of damages the City sustains because of the Grantee's act. A Grantee will be deemed to have submitted a false claim to the City if the Grantee: (a) knowingly presents or causes to be presented to an officer or employee of the City a false Funding Request; (b) knowingly disburses Grant Funds for expenses that are not Eligible Expenses; (c) knowingly makes, uses, or causes to be made or used a false record or statement to get a false Funding Request paid or approved by the City; (d) conspires to defraud the City by getting a false Funding Request allowed or paid by 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 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.

## 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. (Reserved)**

**7.3 Withholding.** Grantee agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Grantee further acknowledges and agrees that City may withhold any payments due to Grantee under this Agreement if Grantee is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Grantee, without interest, upon Grantee coming back into compliance with its obligations.

## 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 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. (Reserved)**

**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, consultants and experts and related costs and City's costs of investigating any claims against the City. Grantee shall also indemnify, defend and hold City harmless from all suits or claims or administrative proceedings for breaches of federal and/or state law regarding the privacy of health information, electronic records or related topics, arising directly or indirectly from Grantee's performance of this Agreement. 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 CONTRACT 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.** Insurance limits are subject to Risk Management review and revision, as appropriate, as conditions warrant. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

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

(c) **Commercial General Liability Insurance** with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

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

(e) **Professional Liability Insurance** Professional Liability Insurance, applicable to Grantee's profession, with limits not less than \$1,000,000 for each claim with respect to negligent acts, errors or omissions in connection with the Services.

(f) **Reserved (Technology Errors and Omissions Liability Coverage)**

(h) **Cyber and Privacy Insurance** with limits of not less than \$5,000,000 per claim. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in any form.

10.1.1 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.

**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 Subgrantees and Evidence of this Insurance.** If a subgrantee will be used to complete any portion of this agreement, the grantee shall ensure that the subgrantee 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** The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Grantee, its employees, agents and subgrantees.

**10.10 Insurance Coverage During the Term of this Grant.** 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 Grant 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 Representations and Warranties or Applicable Laws.** Grantee fails to perform or breaches any of the terms or provisions of Article 8 or 16.

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

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

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

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

**11.2 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 of the Event of Default and that, on the date specified in the notice, this Agreement shall terminate and all rights of Grantee hereunder shall be extinguished. In the sole discretion of the City, Grantee may be allowed ten (10) days to cure the default. In the event of termination for default, 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, if granted by the City in its sole discretion, 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.

**11.3 Termination for Convenience.** City shall have the option, in its sole discretion, to terminate this Agreement at any time for convenience and without cause. City shall exercise this option by giving Grantee written notice that specifies the effective date of termination. Upon receipt of the notice of termination, Grantee shall undertake with diligence all necessary actions to effect the termination of this Agreement on the date specified by City and minimize the liability of Grantee and City to third parties. Such actions shall include, without limitation:

(a) Halting the performance of all work under this Agreement on the date(s) and in the manner specified by City;

(b) Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, services, equipment or other items; and

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

In no event shall City be liable for costs incurred by Grantee or any of its subcontractors after the termination date specified by City, except for those costs incurred at the request of City pursuant to this section.

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

## ARTICLE 12 - DISCLOSURE OF INFORMATION AND DOCUMENTS

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

**12.2 Sunshine Ordinance.** Grantee acknowledges and agrees that this Agreement and the Application Documents are subject to Section 67.24(e) of the San Francisco Administrative Code, which provides that contracts, including this Agreement, grantee's bids, responses to Requests for Proposals and all other records of communications between City and persons or entities seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in 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 contract or other benefit until and unless that person or organization is awarded the contract or benefit. All information provided by Grantee covered by 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 agrees upon request to provide City with financial projections (including profit and loss figures) for the activities and/or projects contemplated by this Grant (“Project”) and annual audited financial statements thereafter. Grantee agrees that all such projections and financial statements shall be public records that must be disclosed.

### 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 H 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 H 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 H without the prior consent of City; provided, however, that Grantee shall not thereby be relieved from any liability or obligation under this Agreement and, as between City and Grantee, Grantee shall be responsible for the acts, defaults and omissions of any subgrantee or its agents or employees as fully as if they were the acts, defaults or omissions of Grantee. Grantee shall ensure that its subgrantees comply with all of the terms of this Agreement, insofar as they apply to the 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 subgrantee shall be deemed to be an Event of Default hereunder. Nothing contained in this Agreement shall create any contractual relationship between any subgrantee and City.

(b) **Terms of 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 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 contractor 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 Department 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 may be sent by U.S. mail or e-mail, and shall be addressed as follows:)

If to the Department or City:

DEPARTMENT OF PUBLIC HEALTH  
OFFICE OF CONTRACT MANAGEMENT AND  
COMPLIANCE  
101 GROVE ST. RM. 402  
San Francisco, CA 94102  
Attn: NORA.MACIAS@SFDPH.ORG

And

DEPARTMENT OF PUBLIC HEALTH  
101 GROVE STREET  
San Francisco, CA 94102

Attn: DREW MURELL

If to Grantee:

BAKER PLACES, INC.  
170 9<sup>TH</sup> STREET  
San Francisco, CA 94103  
Attn: BRETT ANDREWS

Any notice of default must be sent by registered mail.

## ARTICLE 16 - COMPLIANCE

### 16.1 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 Contract.** As a condition to this Agreement, Grantee shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts 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 Reserved.**

**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 ADA, programs, services and other activities provided by a public entity to the public, whether directly or through a grantee or contractor, must be accessible to the disabled public. Grantee shall not discriminate against any person protected under the ADA in connection with all or any portion of the Grant Plan and shall comply at all times with the provisions of the ADA.

**16.8. Requiring Minimum Compensation for Employees.** Grantee shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Grantee is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of the Chapter 12P is available on the web at <http://sfgov.org/olse/mco>. Grantee is required to comply with all of the applicable provisions of 12P, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Grantee certifies that it complies with Chapter 12P.

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

imposed by Section 1.126 by the time it submitted a proposal for the grant, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

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

**16.11 Prohibition on Political Activity with City Funds.** In accordance with San Francisco 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 contract 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 Working with Minors.** In accordance with California Public Resources Code Section 5164, if Grantee, or any subgrantee, is providing services at a City park, playground, recreational center or beach, Contractor shall not hire, and shall prevent its subcontractors from hiring, any person for employment or a volunteer position in a position having supervisory or disciplinary authority over a minor if that person has been convicted of any offense listed in Public Resources Code Section 5164. In addition, if Grantee, or any subgrantee, is providing services to the City involving the supervision or discipline of minors or where Grantee, or any subgrantee, will be working with minors in an unaccompanied setting on more than an incidental or occasional basis, Grantee and any subgrantee shall comply with any and all applicable requirements under federal or state law mandating criminal history screening for such positions and/or prohibiting employment of certain persons including but not limited to California Penal Code Section 290.95. In the event of a conflict between this section and Section 16.16, "Consideration of Criminal History in Hiring and Employment Decisions," of this Agreement, this section shall control. 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 contract 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 Protection of Private Information.** Grantee has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, “Nondisclosure of Private Information,” and 12M.3, “Enforcement” of Administrative Code Chapter 12M, “Protection of Private Information,” which are incorporated herein as if fully set forth. Grantee agrees that any failure of Grantee to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Agreement, bring a false claim action against the Grantee pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Grantee.

**16.15 Public Access to Meetings and Records.** If 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, Grantee shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, 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. 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. Grantee acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. 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.

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

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

(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, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

**16.17 Food Service Waste Reduction Requirements.** 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.

**16.18 Reserved. Slavery Era Disclosure.**

**16.19 Distribution of Beverages and Water.**

**(a) Sugar-Sweetened Beverage Prohibition.** Grantee agrees that it shall 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.

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

**16.20 Reserved.**

**16.21 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.

**ARTICLE 17 - MISCELLANEOUS**

**17.1 No Waiver.** No waiver by the Department or City of any default or breach of this Agreement shall be implied from any failure by the Department or City to take action on account of such default if such default persists or is repeated. No express waiver by the Department 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 Department of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by the Department or City of any action requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.

**17.2 Modification.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

**17.3 Administrative Remedy for Agreement Interpretation.** Should any question arise as to the meaning or intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Department Head, as the case may be, of the Department who shall decide the true meaning and intent of the Agreement. Such decision shall be final and conclusive.

**17.4 Governing Law; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, without regard to its conflict of laws principles. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

**17.5 Headings.** All article and section headings and captions contained in this Agreement are for reference only and shall not be considered in construing this Agreement.

**17.6 Entire Agreement.** This Agreement and the Application Documents set forth the entire Agreement between the parties, and supersede all other oral or written provisions. If there is any conflict



between the terms of this Agreement and the Application Documents, the terms of this Agreement shall govern.

**17.7 Certified Resolution of Signatory Authority.** Upon request of City, Grantee shall deliver to City a copy of the corporate resolution(s) authorizing the execution, delivery and performance of this Agreement, certified as true, accurate and complete by the secretary or assistant secretary of Grantee.

**17.8 Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

**17.9 Successors; No Third-Party Beneficiaries.** Subject to the terms of Article 13, the terms of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Nothing in this Agreement, whether express or implied, shall be construed to give any person or entity (other than the parties hereto and their respective successors and assigns and, in the case of Article 9, the Indemnified Parties) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

**17.10 Survival of Terms.** The obligations of Grantee and the terms of the following provisions of this Agreement shall survive and continue following expiration or termination of this Agreement:

1. Section 4.3 Ownership of Results.
2. Section 6.4 Financial Statements.
3. Section 6.5 Books and Records.
4. Section 6.6 Audit and Inspection of Records.
5. Section 6.7 Submitting False Claims; Monetary Penalties
6. Article 7 Taxes
7. Article 8 Representations and Warranties
8. Article 9 Indemnification and General Liability
9. Section 10.4 Required Post-Expiration Coverage.
10. Article 12 Disclosure of Information and Documents
11. Section 13.4 Grantee Retains Responsibility.
12. Section 14.3 Consequences of Recharacterization.
13. Article 17 Miscellaneous

**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. (Reserved)**

**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 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.

## ARTICLE 18 - DATA AND SECURITY

### 18.1 Business Associate Agreement.

The parties acknowledge that City is a Covered Entity as defined in the Healthcare Insurance Portability and Accountability Act of 1996 (“HIPAA”) and is required to comply with the HIPAA Privacy Rule governing the access, use, disclosure, transmission, and storage of protected health information (“PHI”) and the Security Rule under the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”).

#### The parties acknowledge that Grantee will:

1.  Do **at least one** or more of the following:
  - A. Create, receive, maintain, or transmit PHI for or on behalf of City/SFDPH (including storage of PHI, digital or hard copy, even if Grantee does not view the PHI or only does so on a random or infrequent basis); or
  - B. Receive PHI, or access to PHI, from City/SFDPH or another Business Associate of City, as part of providing a service to or for City/SFDPH, including legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial; or
  - C. Transmit PHI data for City/SFDPH and require access on a regular basis to such PHI. (Such as health information exchanges (HIEs), e-prescribing gateways, or electronic health record vendors)

***FOR PURPOSES OF THIS AGREEMENT, GRANTEE IS A BUSINESS ASSOCIATE OF CITY/SFDPH, AS DEFINED UNDER HIPAA. GRANTEE MUST COMPLY WITH AND COMPLETE THE FOLLOWING ATTACHED DOCUMENTS, INCORPORATED TO THIS AGREEMENT AS THOUGH FULLY SET FORTH HEREIN:***

- a. **Appendix E** SFDPH Business Associate Agreement (BAA) (04-12-2018)
  1. SFDPH Attestation 1 PRIVACY (06-07-2017)
  2. SFDPH Attestation 2 DATA SECURITY (06-07-2017)
2.  **NOT do any of the activities listed above in subsection 1;**

**Grantee is not a Business Associate of City/SFDPH. Appendix E and attestations are not required for the purposes of this Agreement.**

**18.2 Protected Health Information.** Grantee, all subgrantees, all agents and employees of Grantee and any subgrantee shall comply with all federal and state laws regarding the transmission, storage and protection of all protected health information disclosed to Grantee by City in the performance of this

Grant. Grantee agrees that any failure of Grantee to comply with the requirements of federal and/or state and/or local privacy laws shall be a material breach of the Grant. 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 health information given to Grantee or its subgrantees or agents by City, Grantee 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 Grant.

### **18.3 Management of City Data and Confidential Information**

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

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

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

## **ARTICLE 19 - DEPARTMENT SPECIFIC TERMS**

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

**19.2 Exclusion Lists and Employee Verification.** Upon hire and monthly thereafter, Grantee will check the exclusion lists published by the Office of the Inspector General (OIG), General Services Administration (GSA), and the California Department of Health Care Services (DHCS) to ensure that any employee, temporary employee, volunteer, consultant, or governing body member responsible for oversight, administering or delivering state or federally-funded services who is on any of these lists is excluded from (may not work in) your program or agency. Proof of checking these lists must be retained for seven years.

**[SIGNATURES ON NEXT PAGE]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first specified herein. The signatories to this Agreement warrant and represent that they have the authority to enter into this agreement on behalf of the respective parties and to bind them to the terms of this Agreement

CITY

GRANTEE:

CITY AND COUNTY OF SAN FRANCISCO  
DEPARTMENT OF PUBLIC HEALTH

BAKER PLACES, INC.

By: \_\_\_\_\_  
Grant Colfax, MD  
Director of Health

DocuSigned by:  
By: *Brett Andrews*  
E26C1255869D44A...

6/2/2022 | 3:42:43 PDT

Print Name: Brett Andrews

Approved as to Form:

Title: Chief Executive Officer  
Federal Tax ID #: **94-169455**  
City Supplier Number: **0000024757**

David Chiu  
City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

The following appendices are attached to and a part of this Agreement:

- Appendix A, Grant Plan
- Appendix B, Calculation of Charges
- Appendix C, (Reserved)
- Appendix D, Other City Agreements
- Appendix E, Business Associate Agreement
- Appendix F, Invoice Template

## Appendix A – Grant Plan

- A. Purpose:** The purpose of this Grant is to provide funding to enable Grantee to complete its financial review, business plan, and financial plans sufficient to assure the City of the financial viability and stability of Grantee’s programs.

**Appendix A** sets forth the milestone summary, which may be further detailed in writing, executed by the parties, as approved by the City acting in its sole discretion. Further detail would not require a formal modification if the milestone categories (Financial Review, Business Plan and Financial Plan) and the Grant term remain unchanged.

- B. Milestones:** Payment as detailed in Appendix B (Calculation of Charges) shall be deliverable based on Grantee’s successful achievement of the following milestones to the City’s satisfaction acting in its sole discretion.

The Milestones must be achieved during the Grant term to remediate the City’s concerns with respect to Grantee’s operations. Grantee must engage with the City to develop a roadmap for Grantee’s future.

- C. Meeting Schedule:** Grantee and the City will meet periodically to monitor progress, as mutually agreed, after the effective date.

| Milestone  | Tasks  | Due Date (i.e., Number of Calendar Days After Effective Date) |
|--|--|---|
| <b>Financial Review</b>  | <b>Summary:</b> The City will retain an independent consultant to prepare a report that details the reasons for Grantee’s financial deficit. The report will include an evaluation of Grantee’s ongoing financial stability. The report will also, identify all steps necessary to support Grantee’s long-term financial stability, including how Grantee will repay the City any identified financial obligations identified during the Financial review. | 180   |
| <b>Business Plan In response to the Financial Review conducted by the City.</b>  | <b>Financial Sustainability Plan Meeting.</b> Meet with the City to propose long-term operating and financial sustainability planning and mutually agree upon development milestones . Discuss scenarios regarding Baker’s long-term sustainability and relationship with the City.  | 30  |
|  | <b>Draft Financial Sustainability Plan.</b> Submit a proposed outline, format, and draft recommendations for the Plan, subject to the City’s acceptance of the key principals of the plan.   | 180   |
|  | <b>Final Financial Sustainability Plan.</b> Submit the final Plan to the City, subject to the City’s acceptance of the draft financial sustainability plan referenced  | 210   |
| <b>Financial Plan In response to the Financial Review conducted by the City.</b> | <b>Audit.</b> Submit to the City unaudited balance sheets and related statements of income and cash flows for Fiscal Years 2017-18 through 2020-21 (include 2021-22 if available), all in reasonable detail acceptable to the City, certified by an appropriate financial officer of Grantee as accurately presenting the financial position of Grantee.   | 15  |

|  |  |    |
|--|--|----|
|  | If requested by the City, Grantee shall also deliver to the City, within 15 calendar days of the date this Grant is fully executed, audited balance sheets and the related statements of income and cash flows for Fiscal Years 2017-18 through 2020-21 (include 2021-22 if available), certified by a reputable accounting firm as accurately presenting the financial position of Grantee. | 30 |
|--|--|----|

**Appendix B—Budget**

**Note:** Payment for Period 1 is intended to provide funding to cover start-up costs and may be billed on the date or completion of the deliverable listed in the Deliverable column. Payment for Periods 2 through 4 shall be invoiced on the completion of the deliverable in the Deliverable column listed below for work performed and shall be paid 30 days in arrears.

| <b>Deliverables– upon City’s<br/>Acceptance of the following<br/>deliverables</b> | <b>Payment<br/>Period</b> | <b>Total<br/>Attributable<br/>Percent</b> | <b>Payment<br/>Period<br/>Total<br/>Amount</b> |
|---|---------------------------|---|--|
| <b>On Effective Date</b>  | <b>1</b>                  | <b>40%</b>                                | <b>\$484,000.00</b>                            |
| <b>First Draft of Financial<br/>Sustainability Plan</b>                           | <b>2</b>                  | <b>30%</b>                                | <b>\$363,000.00</b>                            |
| <b>Final Financial<br/>Sustainability Plan</b>                                    | <b>3</b>                  | <b>20%</b>                                | <b>\$242,000.00</b>                            |
| <b>Final Acceptance by the<br/>City of all Deliverables</b>                       | <b>4</b>                  | <b>10%</b>                                | <b>\$121,000.00</b>                            |
| <b>Not-to-<br/>Exceed Total</b>   |                           |   | <b>\$1,210,000.00</b>                          |



**Appendix C—Subgrantees**

THERE ARE NO PERMITTED SUBGRANTEES

## Contracts and grants held by the organization as of 5/27/2022

| Prime Supplier Name | Contract Number               | Contract Title                    | Department                | Term Start Date | Term End Date | Values                       |
|---------------------|-------------------------------|-----------------------------------|---------------------------|-----------------|---------------|------------------------------|
|                     |                               |                                   |                           |                 |               | Sum of Contract Award Amount |
| BAKER PLACES INC    | 1000018107                    | MYR-89385-17                      | MYR Mayor                 | 6/2/2020        | 10/31/2021    | \$50,230                     |
|                     | 1000017247                    | MYR-134660-19                     | MYR Mayor                 | 1/1/2020        | 12/31/2021    | \$43,813                     |
|                     | 1000005687                    | ENCUMBER FY 02-03 - BAKER<br>PLAC | HSA Human Services Agency | 6/18/2003       | 6/30/2022     | \$95,247                     |
|                     | 1000005703                    | TO ENCUMBER FUNDS FOR FY 04 -     | HSA Human Services Agency | 8/26/2003       | 6/30/2022     | \$466,578                    |
|                     | 1000009940                    | (blank)                           | DPH Public Health         | 7/1/2018        | 6/30/2022     | \$55,475,141                 |
|                     | 1000012788                    | Baker(H),#12788, 20-21Amend-2     | DPH Public Health         | 1/1/2019        | 6/30/2026     | \$27,233,566                 |
|                     | 1000017071                    | (blank)                           | DPH Public Health         | 3/1/2020        | 12/31/2022    | \$9,540,278                  |
|                     | 1000019150                    | MYR-134660-19                     | MYR Mayor                 | 1/1/2020        | 12/31/2021    | \$131                        |
|                     | 1000021574                    | Baker(Ferguson) 21-21 Original    | DPH Public Health         | 7/1/2021        | 6/30/2023     | \$3,658,739                  |
|                     | <b>BAKER PLACES INC Total</b> |                                   |                           |                 |               |                              |



## San Francisco Department of Public Health

## Business Associate Agreement

This Business Associate Agreement (“BAA”) supplements and is made a part of the contract by and between the City and County of San Francisco, the Covered Entity (“CE”), and Contractor, the Business Associate (“BA”) (the “Agreement”). To the extent that the terms of the Agreement are inconsistent with the terms of this BAA, the terms of this BAA shall control.

**RECITALS**

A. CE, by and through the San Francisco Department of Public Health (“SFDPH”), wishes to disclose certain information to BA pursuant to the terms of the Agreement, some of which may constitute Protected Health Information (“PHI”) (defined below).

B. For purposes of the Agreement, CE requires Contractor, even if Contractor is also a covered entity under HIPAA, to comply with the terms and conditions of this BAA as a BA of CE.

C. CE and BA intend to protect the privacy and provide for the security of PHI disclosed to BA pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”), and regulations promulgated there under by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws, including, but not limited to, California Civil Code §§ 56, et seq., California Health and Safety Code § 1280.15, California Civil Code §§ 1798, et seq., California Welfare & Institutions Code §§5328, et seq., and the regulations promulgated there under (the “California Regulations”).

D. As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require CE to enter into a contract containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(a) and (e) and 164.504(e) of the Code of Federal Regulations (“C.F.R.”) and contained in this BAA.

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

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

**1. Definitions.**

**a. Breach** means the unauthorized acquisition, access, use, or disclosure of PHI that compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information, and shall have the meaning given to such term under the HITECH Act and HIPAA Regulations [42 U.S.C. Section 17921 and 45 C.F.R. Section 164.402], as well as California Civil Code Sections 1798.29 and 1798.82.

**b. Breach Notification Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and D.



## San Francisco Department of Public Health

## Business Associate Agreement

**c. Business Associate** is a person or entity that performs certain functions or activities that involve the use or disclosure of protected health information received from a covered entity, but other than in the capacity of a member of the workforce of such covered entity or arrangement, and shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including, but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.

**d. Covered Entity** means a health plan, a health care clearinghouse, or a health care provider who transmits any information in electronic form in connection with a transaction covered under HIPAA Regulations, and shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.

**e. Data Aggregation** means the combining of Protected Information by the BA with the Protected Information received by the BA in its capacity as a BA of another CE, to permit data analyses that relate to the health care operations of the respective covered entities, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

**f. Designated Record Set** means a group of records maintained by or for a CE, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

**g. Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to, 45 C.F.R. Section 160.103. For the purposes of this BAA, Electronic PHI includes all computerized data, as defined in California Civil Code Sections 1798.29 and 1798.82.

**h. Electronic Health Record** means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff, and shall have the meaning given to such term under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.

**i. Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

**j. Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.

**k. Protected Health Information or PHI** means any information, including electronic PHI, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Sections 160.103 and 164.501. For the purposes of this BAA, PHI includes all medical information and health insurance information as defined in California Civil Code Sections 56.05 and 1798.82.

**l. Protected Information** shall mean PHI provided by CE to BA or created, maintained, received or transmitted by BA on CE's behalf.



## San Francisco Department of Public Health

## Business Associate Agreement

**m. Security Incident** means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system, and shall have the meaning given to such term under the Security Rule, including, but not limited to, 45 C.F.R. Section 164.304.

**n. Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.

**o. Unsecured PHI** means PHI that is not secured by a technology standard that renders PHI unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute, and shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h) and 45 C.F.R. Section 164.402.

## 2. Obligations of Business Associate.

**a. Attestations.** Except when CE's data privacy officer exempts BA in writing, the BA shall complete the following forms, attached and incorporated by reference as though fully set forth herein, SFDPH Attestations for Privacy (Attachment 1) and Data Security (Attachment 2) within sixty (60) calendar days from the execution of the Agreement. If CE makes substantial changes to any of these forms during the term of the Agreement, the BA will be required to complete CE's updated forms within sixty (60) calendar days from the date that CE provides BA with written notice of such changes. BA shall retain such records for a period of seven years after the Agreement terminates and shall make all such records available to CE within 15 calendar days of a written request by CE.

**b. User Training.** The BA shall provide, and shall ensure that BA subcontractors, provide, training on PHI privacy and security, including HIPAA and HITECH and its regulations, to each employee or agent that will access, use or disclose Protected Information, upon hire and/or prior to accessing, using or disclosing Protected Information for the first time, and at least annually thereafter during the term of the Agreement. BA shall maintain, and shall ensure that BA subcontractors maintain, records indicating the name of each employee or agent and date on which the PHI privacy and security trainings were completed. BA shall retain, and ensure that BA subcontractors retain, such records for a period of seven years after the Agreement terminates and shall make all such records available to CE within 15 calendar days of a written request by CE.

**c. Permitted Uses.** BA may use, access, and/or disclose Protected Information only for the purpose of performing BA's obligations for, or on behalf of, the City and as permitted or required under the Agreement and BAA, or as required by law. Further, BA shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by CE. However, BA may use Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE [45 C.F.R. Sections 164.502, 164.504(e)(2). and 164.504(e)(4)(i)].

**d. Permitted Disclosures.** BA shall disclose Protected Information only for the purpose of performing BA's obligations for, or on behalf of, the City and as permitted or required under the Agreement and BAA, or as required by law. BA shall not disclose Protected Information in any manner that would constitute a violation of the



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## Business Associate Agreement

Privacy Rule or the HITECH Act if so disclosed by CE. However, BA may disclose Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE. If BA discloses Protected Information to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this BAA and used or disclosed only as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BA of any breaches, security incidents, or unauthorized uses or disclosures of the Protected Information in accordance with paragraph 2 (n) of this BAA, to the extent it has obtained knowledge of such occurrences [42 U.S.C. Section 17932; 45 C.F.R. Section 164.504(e)]. BA may disclose PHI to a BA that is a subcontractor and may allow the subcontractor to create, receive, maintain, or transmit Protected Information on its behalf, if the BA obtains satisfactory assurances, in accordance with 45 C.F.R. Section 164.504(e)(1), that the subcontractor will appropriately safeguard the information [45 C.F.R. Section 164.502(e)(1)(ii)].

**e. Prohibited Uses and Disclosures.** BA shall not use or disclose Protected Information other than as permitted or required by the Agreement and BAA, or as required by law. BA shall not use or disclose Protected Information for fundraising or marketing purposes. BA shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the Protected Information solely relates [42 U.S.C. Section 17935(a) and 45 C.F.R. Section 164.522(a)(1)(vi)]. BA shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of CE and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2), and the HIPAA regulations, 45 C.F.R. Section 164.502(a)(5)(ii); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to the Agreement.

**f. Appropriate Safeguards.** BA shall take the appropriate security measures to protect the confidentiality, integrity and availability of PHI that it creates, receives, maintains, or transmits on behalf of the CE, and shall prevent any use or disclosure of PHI other than as permitted by the Agreement or this BAA, including, but not limited to, administrative, physical and technical safeguards in accordance with the Security Rule, including, but not limited to, 45 C.F.R. Sections 164.306, 164.308, 164.310, 164.312, 164.314 164.316, and 164.504(e)(2)(ii)(B). BA shall comply with the policies and procedures and documentation requirements of the Security Rule, including, but not limited to, 45 C.F.R. Section 164.316, and 42 U.S.C. Section 17931. BA is responsible for any civil penalties assessed due to an audit or investigation of BA, in accordance with 42 U.S.C. Section 17934(c).

**g. Business Associate's Subcontractors and Agents.** BA shall ensure that any agents and subcontractors that create, receive, maintain or transmit Protected Information on behalf of BA, agree in writing to the same restrictions and conditions that apply to BA with respect to such PHI and implement the safeguards required by paragraph 2.f. above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2) through (e)(5); 45 C.F.R. Section 164.308(b)]. BA shall mitigate the effects of any such violation.

**h. Accounting of Disclosures.** Within ten (10) calendar days of a request by CE for an accounting of disclosures of Protected Information or upon any disclosure of Protected Information for which CE is required to account to an individual, BA and its agents and subcontractors shall make available to CE the information required to



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## Business Associate Agreement

provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935 (c), as determined by CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents and subcontractors for at least seven (7) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an Electronic Health Record. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure [45 C.F.R. 164.528(b)(2)]. If an individual or an individual's representative submits a request for an accounting directly to BA or its agents or subcontractors, BA shall forward the request to CE in writing within five (5) calendar days.

**i. Access to Protected Information.** BA shall make Protected Information maintained by BA or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within (5) days of request by CE to enable CE to fulfill its obligations under state law [Health and Safety Code Section 123110] and the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If BA maintains Protected Information in electronic format, BA shall provide such information in electronic format as necessary to enable CE to fulfill its obligations under the HITECH Act and HIPAA Regulations, including, but not limited to, 42 U.S.C. Section 17935(e) and 45 C.F.R. 164.524.

**j. Amendment of Protected Information.** Within ten (10) days of a request by CE for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, BA and its agents and subcontractors shall make such Protected Information available to CE for amendment and incorporate any such amendment or other documentation to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If an individual requests an amendment of Protected Information directly from BA or its agents or subcontractors, BA must notify CE in writing within five (5) days of the request and of any approval or denial of amendment of Protected Information maintained by BA or its agents or subcontractors [45 C.F.R. Section 164.504(e)(2)(ii)(F)].

**k. Governmental Access to Records.** BA shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to CE and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining BA's compliance with HIPAA [45 C.F.R. Section 164.504(e)(2)(ii)(I)]. BA shall provide CE a copy of any Protected Information and other documents and records that BA provides to the Secretary concurrently with providing such Protected Information to the Secretary.

**l. Minimum Necessary.** BA, its agents and subcontractors shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the intended purpose of such use, disclosure, or request. [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)]. BA understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to



## San Francisco Department of Public Health

## Business Associate Agreement

what constitutes “minimum necessary” to accomplish the intended purpose in accordance with HIPAA and HIPAA Regulations.

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

**n. Notification of Breach.** BA shall notify CE within 5 calendar days of any breach of Protected Information; any use or disclosure of Protected Information not permitted by the BAA; any Security Incident (except as otherwise provided below) related to Protected Information, and any use or disclosure of data in violation of any applicable federal or state laws by BA or its agents or subcontractors. The notification shall include, to the extent possible, the identification of each individual whose unsecured Protected Information has been, or is reasonably believed by the BA to have been, accessed, acquired, used, or disclosed, as well as any other available information that CE is required to include in notification to the individual, the media, the Secretary, and any other entity under the Breach Notification Rule and any other applicable state or federal laws, including, but not limited, to 45 C.F.R. Section 164.404 through 45 C.F.R. Section 164.408, at the time of the notification required by this paragraph or promptly thereafter as information becomes available. BA shall take (i) prompt corrective action to cure any deficiencies and (ii) any action pertaining to unauthorized uses or disclosures required by applicable federal and state laws. [42 U.S.C. Section 17921; 42 U.S.C. Section 17932; 45 C.F.R. 164.410; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)]

**o. Breach Pattern or Practice by Business Associate’s Subcontractors and Agents.** Pursuant to 42 U.S.C. Section 17934(b) and 45 C.F.R. Section 164.504(e)(1)(iii), if the BA knows of a pattern of activity or practice of a subcontractor or agent that constitutes a material breach or violation of the subcontractor or agent’s obligations under the Contract or this BAA, the BA must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the BA must terminate the contractual arrangement with its subcontractor or agent, if feasible. BA shall provide written notice to CE of any pattern of activity or practice of a subcontractor or agent that BA believes constitutes a material breach or violation of the subcontractor or agent’s obligations under the Contract or this BAA within five (5) calendar days of discovery and shall meet with CE to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

### 3. Termination.

**a. Material Breach.** A breach by BA of any provision of this BAA, as determined by CE, shall constitute a material breach of the Agreement and this BAA and shall provide grounds for immediate termination of the Agreement and this BAA, any provision in the AGREEMENT to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii).]

**b. Judicial or Administrative Proceedings.** CE may terminate the Agreement and this BAA, effective immediately, if (i) BA is named as defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the BA has violated any





## San Francisco Department of Public Health

## Business Associate Agreement

standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

**c. Effect of Termination.** Upon termination of the Agreement and this BAA for any reason, BA shall, at the option of CE, return or destroy all Protected Information that BA and its agents and subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by CE, BA shall continue to extend the protections and satisfy the obligations of Section 2 of this BAA to such information, and limit further use and disclosure of such PHI to those purposes that make the return or destruction of the information infeasible [45 C.F.R. Section 164.504(e)(2)(ii)(J)]. If CE elects destruction of the PHI, BA shall certify in writing to CE that such PHI has been destroyed in accordance with the Secretary's guidance regarding proper destruction of PHI.

**d. Civil and Criminal Penalties.** BA understands and agrees that it is subject to civil or criminal penalties applicable to BA for unauthorized use, access or disclosure of Protected Information in accordance with the HIPAA Regulations and the HITECH Act including, but not limited to, 42 U.S.C. 17934 (c).

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

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

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

#### 5. Reimbursement for Fines or Penalties.

In the event that CE pays a fine to a state or federal regulatory agency, and/or is assessed civil penalties or damages through private rights of action, based on an impermissible access, use or disclosure of PHI by BA or its

APPENDIX E



San Francisco Department of Public Health

Business Associate Agreement

subcontractors or agents, then BA shall reimburse CE in the amount of such fine or penalties or damages within thirty (30) calendar days from City's written notice to BA of such fines, penalties or damages.

Attachment 1 – SFDPH Privacy Attestation, version 06-07-2017

Attachment 2 – SFDPH Data Security Attestation, version 06-07-2017

Office of Compliance and Privacy Affairs  
San Francisco Department of Public Health  
101 Grove Street, Room 330, San Francisco, CA 94102  
Email: [compliance.privacy@sfdph.org](mailto:compliance.privacy@sfdph.org)  
Hotline (Toll-Free): 1-855-729-6040

|                  |  |                           |  |
|------------------|--|---------------------------|--|
| Contractor Name: |  | Contractor City Vendor ID |  |
|------------------|--|---------------------------|--|

## PRIVACY ATTESTATION

**INSTRUCTIONS:** Contractors and Partners who receive or have access to health or medical information or electronic health record systems maintained by SFPDH must complete this form. Retain completed Attestations in your files for a period of 7 years. Be prepared to submit completed attestations, along with evidence related to the following items, if requested to do so by SFPDH.

**Exceptions:** If you believe that a requirement is Not Applicable to you, see instructions below in Section IV on how to request clarification or obtain an exception.

### I. All Contractors.

| DOES YOUR ORGANIZATION... |   |               |  |         |  |        | Yes                      | No*                      |
|---------------------------|---|---------------|--|---------|--|--------|--------------------------|--------------------------|
| A                         | Have formal Privacy Policies that comply with the Health Insurance Portability and Accountability Act (HIPAA)?  |               |  |         |  |        | <input type="checkbox"/> | <input type="checkbox"/> |
| B                         | Have a Privacy Officer or other individual designated as the person in charge of investigating privacy breaches or related incidents?   |               |  |         |  |        | <input type="checkbox"/> | <input type="checkbox"/> |
|                           | If yes:   | Name & Title: |  | Phone # |  | Email: |                          |                          |
| C                         | Require health information Privacy Training upon hire and annually thereafter for all employees who have access to health information? [Retain documentation of trainings for a period of 7 years.] [SFPDH privacy training materials are available for use; contact OCPA at 1-855-729-6040.]     |               |  |         |  |        | <input type="checkbox"/> | <input type="checkbox"/> |
| D                         | Have proof that employees have signed a form upon hire and annually thereafter, with their name and the date, acknowledging that they have received health information privacy training? [Retain documentation of acknowledgement of trainings for a period of 7 years.]                          |               |  |         |  |        | <input type="checkbox"/> | <input type="checkbox"/> |
| E                         | Have (or will have if/when applicable) Business Associate Agreements with subcontractors who create, receive, maintain, transmit, or access SFPDH's health information?   |               |  |         |  |        | <input type="checkbox"/> | <input type="checkbox"/> |
| F                         | Assure that staff who create, or transfer health information (via laptop, USB/thumb-drive, handheld), have prior supervisorial authorization to do so <b>AND</b> that health information is <b>only transferred or created on encrypted devices approved by SFPDH Information Security staff?</b> |               |  |         |  |        | <input type="checkbox"/> | <input type="checkbox"/> |

### II. Contractors who serve patients/clients and have access to SFPDH PHI, must also complete this section.

| If Applicable: DOES YOUR ORGANIZATION... |   |  |  |  |  |  | Yes                      | No*                      |
|--|---|--|--|--|--|--|--------------------------|--------------------------|
| G  | Have (or will have if/when applicable) evidence that SFPDH Service Desk (628-206-SERV) was notified to de-provision employees who have access to SFPDH health information record systems within 2 business days for regular terminations and within 24 hours for terminations due to cause?                         |  |  |  |  |  | <input type="checkbox"/> | <input type="checkbox"/> |
| H  | Have evidence in each patient's / client's chart or electronic file that a <a href="#">Privacy Notice</a> that meets HIPAA regulations was provided in the patient's / client's preferred language? (English, Cantonese, Vietnamese, Tagalog, Spanish, Russian forms may be required and are available from SFPDH.) |  |  |  |  |  | <input type="checkbox"/> | <input type="checkbox"/> |
| I  | Visibly post the Summary of the Notice of Privacy Practices in all six languages in common patient areas of your treatment facility?  |  |  |  |  |  | <input type="checkbox"/> | <input type="checkbox"/> |
| J  | Document each disclosure of a patient's/client's health information for purposes <u>other than</u> treatment, payment, or operations?   |  |  |  |  |  | <input type="checkbox"/> | <input type="checkbox"/> |
| K  | When required by law, have proof that signed authorization for disclosure forms (that meet the requirements of the HIPAA Privacy Rule) are obtained PRIOR to releasing a patient's/client's health information?   |  |  |  |  |  | <input type="checkbox"/> | <input type="checkbox"/> |

**III. ATTEST:** Under penalty of perjury, I hereby attest that to the best of my knowledge the information herein is true and correct and that I have authority to sign on behalf of and bind Contractor listed above.

|  |               |  |           |  |      |  |
|--|---------------|--|-----------|--|------|--|
| ATTESTED by Privacy Officer or designated person | Name: (print) |  | Signature |  | Date |  |
|--|---------------|--|-----------|--|------|--|

**IV. \*EXCEPTIONS:** If you have answered "NO" to any question or believe a question is Not Applicable, please contact OCPA at **1-855-729-6040** or [compliance.privacy@sfdph.org](mailto:compliance.privacy@sfdph.org) for a consultation. All "No" or "N/A" answers must be reviewed and approved by OCPA below.

|                               |              |  |           |  |      |  |
|-------------------------------|--------------|--|-----------|--|------|--|
| EXCEPTION(S) APPROVED by OCPA | Name (print) |  | Signature |  | Date |  |
|-------------------------------|--------------|--|-----------|--|------|--|

|                  |  |                           |  |
|------------------|--|---------------------------|--|
| Contractor Name: |  | Contractor City Vendor ID |  |
|------------------|--|---------------------------|--|

### DATA SECURITY ATTESTATION

**INSTRUCTIONS:** Contractors and Partners who receive or have access to health or medical information or electronic health record systems maintained by SFPDH must complete this form. Retain completed Attestations in your files for a period of 7 years. Be prepared to submit completed attestations, along with evidence related to the following items, if requested to do so by SFPDH.

**Exceptions:** If you believe that a requirement is Not Applicable to you, see instructions in Section III below on how to request clarification or obtain an exception.

#### I. All Contractors.

| DOES YOUR ORGANIZATION... |  |               |         |  |        | Yes | No* |  |
|---------------------------|--|---------------|---------|--|--------|-----|-----|--|
| A                         | Conduct assessments/audits of your data security safeguards to demonstrate and document compliance with your security policies and the requirements of HIPAA/HITECH at least every two years? [Retain documentation for a period of 7 years]   |               |         |  |        |     |     |  |
| B                         | Use findings from the assessments/audits to identify and mitigate known risks into documented remediation plans?   |               |         |  |        |     |     |  |
|                           | Date of last Data Security Risk Assessment/Audit:  |               |         |  |        |     |     |  |
|                           | Name of firm or person(s) who performed the Assessment/Audit and/or authored the final report:   |               |         |  |        |     |     |  |
| C                         | Have a formal Data Security Awareness Program?   |               |         |  |        |     |     |  |
| D                         | Have formal Data Security Policies and Procedures to detect, contain, and correct security violations that comply with the Health Insurance Portability and Accountability Act (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH)?            |               |         |  |        |     |     |  |
| E                         | Have a Data Security Officer or other individual designated as the person in charge of ensuring the security of confidential information?  |               |         |  |        |     |     |  |
|                           | If yes:  | Name & Title: | Phone # |  | Email: |     |     |  |
| F                         | Require Data Security Training upon hire and annually thereafter for all employees who have access to health information? [Retain documentation of trainings for a period of 7 years.] [SFPDH data security training materials are available for use; contact OCPA at 1-855-729-6040.] |               |         |  |        |     |     |  |
| G                         | Have proof that employees have signed a form upon hire and annually, or regularly, thereafter, with their name and the date, acknowledging that they have received data security training? [Retain documentation of acknowledgement of trainings for a period of 7 years.]             |               |         |  |        |     |     |  |
| H                         | Have (or will have if/when applicable) Business Associate Agreements with subcontractors who create, receive, maintain, transmit, or access SFPDH's health information?  |               |         |  |        |     |     |  |
| I                         | Have (or will have if/when applicable) a diagram of how SFPDH data flows between your organization and subcontractors or vendors (including named users, access methods, on-premise data hosts, processing systems, etc.)?   |               |         |  |        |     |     |  |

**II. ATTEST:** Under penalty of perjury, I hereby attest that to the best of my knowledge the information herein is true and correct and that I have authority to sign on behalf of and bind Contractor listed above.

|  |               |  |           |  |      |  |
|--|---------------|--|-----------|--|------|--|
| ATTESTED by Data Security Officer or designated person | Name: (print) |  | Signature |  | Date |  |
|--|---------------|--|-----------|--|------|--|

**III. \*EXCEPTIONS:** If you have answered "NO" to any question or believe a question is Not Applicable, please contact OCPA at **1-855-729-6040** or [compliance.privacy@sfdph.org](mailto:compliance.privacy@sfdph.org) for a consultation. All "No" or "N/A" answers must be reviewed and approved by OCPA below.

|                               |              |  |           |  |      |  |
|-------------------------------|--------------|--|-----------|--|------|--|
| EXCEPTION(S) APPROVED by OCPA | Name (print) |  | Signature |  | Date |  |
|-------------------------------|--------------|--|-----------|--|------|--|

**DEPARTMENT OF PUBLIC HEALTH CONTRACTOR  
FEE FOR SERVICE STATEMENT OF DELIVERABLES AND INVOICE**

**CONTRACTOR:** Baker Places, Inc.  
**Address:** 170 9TH STREET  
San Francisco, CA 94103

**Telephone:**  
**FAX:**

**Control Number**

**Contract Purchase Order PO No.**

**Fund Source:**

**CONTRACT TERM:** 7/1/2022 - 6/30/2023

**Invoicing Period:**

**CONTRACT NAME:** Baker Places, Inc. - Special Grant

**Invoice Number:**

**PROGRAM EXHIBIT:** Appendix A / B

| <b>Deliverables</b>                                    | <b>Total<br/>contracted<br/>UOS (hours)</b> | <b>UOS Delivered<br/>THIS PERIOD</b> | <b>UNIT RATE Per<br/>Hour</b> | <b>AMOUNT DUE</b> | <b>UOS Delivered<br/>TO DATE</b> | <b>% OF<br/>TOTAL</b> | <b>Remaining<br/>Units to be<br/>Delivered</b> |
|--|---|--------------------------------------|-------------------------------|-------------------|----------------------------------|-----------------------|--|
| On Effective Date (40%)                                | 1   |                                      | \$484,000.00                  |                   |                                  |                       |  |
| First Draft of Financial Sustainability Plan (30%)     | 1   |                                      | \$363,000.00                  |                   |                                  |                       |  |
| Final Financial Sustainability Plan (20%)              | 1   |                                      | \$242,000.00                  |                   |                                  |                       |  |
| Final Acceptance by the City of all Deliverables (10%) | 1   |                                      | \$121,000.00                  |                   |                                  |                       |  |
|  |   |                                      |                               |                   |                                  |                       |  |
|  |   |                                      |                               |                   |                                  |                       |  |
|  |   |                                      |                               |                   |                                  |                       |  |
|  |   |                                      |                               |                   |                                  |                       |  |
|  |   |                                      |                               |                   |                                  |                       |  |
|  |   |                                      |                               |                   |                                  |                       |  |
|  |   |                                      |                               |                   |                                  |                       |  |
|  |   |                                      |                               |                   |                                  |                       |  |
|  |   |                                      |                               |                   |                                  |                       |  |
|  |   |                                      |                               |                   |                                  |                       |  |
|  |   |                                      |                               |                   |                                  |                       |  |
|  |   |                                      |                               |                   |                                  |                       |  |
|  |   |                                      |                               |                   |                                  |                       |  |

|  |  |
|--|--|
| <b>TOTAL EXPENSES</b>                                  |  |
| <b>LESS: Initial Operational Cost Advance Recovery</b> |  |
| <b>Other Adjustments:</b>                              |  |
| <b>REIMBURSEMENT</b>                                   |  |

**NOTES:**  
See Appendix B for details

I certify that the information provided above is, to the best of my knowledge, complete and accurate; the amount requested for reimbursement is in accordance with the contract approved for services provided under the provision of that contract. Full justification and backup records for those claims are maintained in our office at the address indicated.

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

|   |   |
|---|---|
| Send to: SFDPH<br>1380 Howard St.<br>San Francisco, CA 94103<br><b>Attn: Maximilian Rocha</b> | SFDPH/LHH Authorization For Payment:<br><br><b>By:</b> _____ <b>Date:</b> _____<br>Maximilian Rocha |
|---|---|



## San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102

Phone: 415.252.3100 . Fax: 415.252.3112

[ethics.commission@sfgov.org](mailto:ethics.commission@sfgov.org) . [www.sfethics.org](http://www.sfethics.org)

Received On:

File #: 220705

Bid/RFP #:

### Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

#### 1. FILING INFORMATION

|   |   |
|---|---|
| <b>TYPE OF FILING</b>                                       | <b>DATE OF ORIGINAL FILING (for amendment only)</b> |
| Original  |   |
| <b>AMENDMENT DESCRIPTION – Explain reason for amendment</b> |   |
|   |   |

#### 2. CITY ELECTIVE OFFICE OR BOARD

|                        |                                      |
|------------------------|--------------------------------------|
| <b>OFFICE OR BOARD</b> | <b>NAME OF CITY ELECTIVE OFFICER</b> |
| Board of Supervisors   | Members                              |

#### 3. FILER'S CONTACT

|                                  |                                |
|----------------------------------|--------------------------------|
| <b>NAME OF FILER'S CONTACT</b>   | <b>TELEPHONE NUMBER</b>        |
| Angela Calvillo                  | 415-554-5184                   |
| <b>FULL DEPARTMENT NAME</b>      | <b>EMAIL</b>                   |
| office of the clerk of the Board | Board.of.Supervisors@sfgov.org |

#### 4. CONTRACTING DEPARTMENT CONTACT

|                                     |  |
|-------------------------------------|--|
| <b>NAME OF DEPARTMENTAL CONTACT</b> | <b>DEPARTMENT CONTACT TELEPHONE NUMBER</b> |
| Kelly Hiramoto                      | 415-255-3492                               |
| <b>FULL DEPARTMENT NAME</b>         | <b>DEPARTMENT CONTACT EMAIL</b>            |
| DPH Department of Public Health     | kelly.hiramoto@sfdph.org                   |

| 5. CONTRACTOR   |   |
|---|---|
| <b>NAME OF CONTRACTOR</b><br>Baker Places, Inc.   | <b>TELEPHONE NUMBER</b><br>415-777-0333 |
| <b>STREET ADDRESS (including City, State and Zip Code)</b><br>170 9th Street, San Francisco, CA 94103 | <b>EMAIL</b><br>brett.andrews@prcsf.org |

| 6. CONTRACT  |                                |  |
|--|--------------------------------|--|
| <b>DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)</b>  | <b>ORIGINAL BID/RFP NUMBER</b> | <b>FILE NUMBER (If applicable)</b><br>220705 |
| <b>DESCRIPTION OF AMOUNT OF CONTRACT</b><br>\$1,210,000  |                                |  |
| <b>NATURE OF THE CONTRACT (Please describe)</b><br>To award a one-time, limited term grant for the purpose of maintaining the financial solvency of the agency |                                |  |

| 7. COMMENTS |
|-------------|
|             |

| 8. CONTRACT APPROVAL                |  |
|-------------------------------------|--|
| This contract was approved by:      |  |
| <input type="checkbox"/>            | THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM   |
| <input checked="" type="checkbox"/> | A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES<br>Board of Supervisors                                   |
| <input type="checkbox"/>            | THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS |

**9. AFFILIATES AND SUBCONTRACTORS**

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

| #  | LAST NAME/ENTITY/SUBCONTRACTOR | FIRST NAME | TYPE               |
|----|--------------------------------|------------|--------------------|
| 1  | Schneider                      | Brian      | Board of Directors |
| 2  | Andrews                        | Brett      | Board of Directors |
| 3  | Roger                          | Kent       | Board of Directors |
| 4  |                                |            |                    |
| 5  |                                |            |                    |
| 6  |                                |            |                    |
| 7  |                                |            |                    |
| 8  |                                |            |                    |
| 9  |                                |            |                    |
| 10 |                                |            |                    |
| 11 |                                |            |                    |
| 12 |                                |            |                    |
| 13 |                                |            |                    |
| 14 |                                |            |                    |
| 15 |                                |            |                    |
| 16 |                                |            |                    |
| 17 |                                |            |                    |
| 18 |                                |            |                    |
| 19 |                                |            |                    |



**9. AFFILIATES AND SUBCONTRACTORS**

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

| #  | LAST NAME/ENTITY/SUBCONTRACTOR | FIRST NAME | TYPE |
|----|--------------------------------|------------|------|
| 20 |                                |            |      |
| 21 |                                |            |      |
| 22 |                                |            |      |
| 23 |                                |            |      |
| 24 |                                |            |      |
| 25 |                                |            |      |
| 26 |                                |            |      |
| 27 |                                |            |      |
| 28 |                                |            |      |
| 29 |                                |            |      |
| 30 |                                |            |      |
| 31 |                                |            |      |
| 32 |                                |            |      |
| 33 |                                |            |      |
| 34 |                                |            |      |
| 35 |                                |            |      |
| 36 |                                |            |      |
| 37 |                                |            |      |
| 38 |                                |            |      |

**9. AFFILIATES AND SUBCONTRACTORS**

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

| #  | LAST NAME/ENTITY/SUBCONTRACTOR | FIRST NAME | TYPE |
|----|--------------------------------|------------|------|
| 39 |                                |            |      |
| 40 |                                |            |      |
| 41 |                                |            |      |
| 42 |                                |            |      |
| 43 |                                |            |      |
| 44 |                                |            |      |
| 45 |                                |            |      |
| 46 |                                |            |      |
| 47 |                                |            |      |
| 48 |                                |            |      |
| 49 |                                |            |      |
| 50 |                                |            |      |

Check this box if you need to include additional names. Please submit a separate form with complete information. Select “Supplemental” for filing type.

**10. VERIFICATION**

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

**I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**

|   |                           |
|---|---------------------------|
| <p><b>SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK</b></p><br><br><p>BOS Clerk of the Board</p> | <p><b>DATE SIGNED</b></p> |
|---|---------------------------|

President, District 10  
BOARD of SUPERVISORS



City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689  
Tel. No. 554-6516  
Fax No. 554-7674  
TDD/TTY No. 544-6546

**Shamann Walton**

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**PRESIDENTIAL ACTION**

Date: 6/9/2022

To: Angela Calvillo, Clerk of the Board of Supervisors

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Madam Clerk,

Pursuant to Board Rules, I am hereby:

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

File No.

220705

Dorsey

(Primary Sponsor)

Title. [Grant Agreement for Financial Solvency - Baker Places, Inc. - Not to Exceed \$1,210,000 - Waiver of Competitive Solicitation Requirement]

---

Transferring (Board Rule No 3.3)

File No.

(Primary Sponsor)

Title.

From:

Committee

To:

Committee

Assigning Temporary Committee Appointment (Board Rule No. 3.1)

Supervisor:

Replacing Supervisor:

For:

(Date)

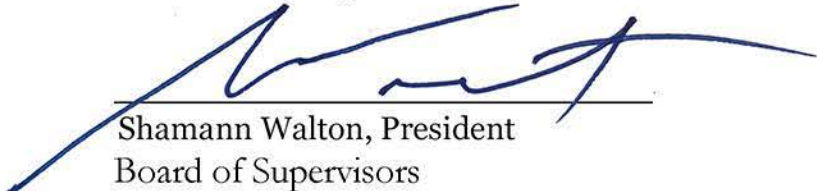
(Committee)

Meeting

Start Time:

End Time:

Temporary Assignment:  Partial  Full Meeting

  
Shamann Walton, President  
Board of Supervisors

**From:** [Conine-Nakano, Susanna \(MYR\)](#)  
**To:** [BOS Legislation, \(BOS\)](#); [GIVNER, JON \(CAT\)](#); [Gee, Natalie \(BOS\)](#)  
**Cc:** [Paulino, Tom \(MYR\)](#); [DorseyStaff \(BOS\)](#); [Prager, Jackie \(BOS\)](#); [DorseyStaff \(BOS\)](#); [Hiramoto, Kelly \(DPH\)](#); [Validzic, Ana \(DPH\)](#)  
**Subject:** Mayor -- Ordinance -- Baker Place  
**Date:** Tuesday, June 7, 2022 4:37:52 PM  
**Attachments:** [Mayor -- Ordinance -- Baker Place.zip](#)

---

Hello Clerks,

Attached for introduction to the Board of Supervisors is an ordinance authorizing the Department of Public Health to award a one-time, limited term grant to Baker Places, Inc. ("Baker"), without engaging in the competitive solicitation process otherwise required by the Administrative Code for grants, for the purpose of maintaining the financial solvency of Baker, in an amount not to exceed \$1,210,000 for a not-to-exceed one-year period.

[@GIVNER, JON \(CAT\)](#), can you please reply-all to confirm your approval? Thanks!  
Please note that Supervisors Dorsey and Mandelman are cosponsors of this legislation.

We are also requesting a 30-day waiver for the Baker Place Ordinance and PRC Ordinance from President Walton so that they may be heard and approved by June 30, 2022. The ordinances would authorize DPH to award one time, limited grants to both Baker Places (\$1.2 million) and Positive Resource Center (PRC) (\$2 million) for total of \$3.2 million, and they would allow for the financial solvency of both organizations through the end of the current fiscal year.

More specifically, this will preserve mental health and substance use treatment services including over 200 beds and will also preserve over 250 staff positions at Baker Place and PRC. If ordinances are not passed by June 30th, these agencies are at risk of closure as a result of financial insolvency. These ordinances are an emergency stop-gap measure and are intended to preserve services to patients who are most vulnerable while Baker Place/PRC stabilizes.

[@Gee, Natalie \(BOS\)](#), please advise if President Walton would like any additional resources in order to consider the 30-day waiver request.

Please let me know if you have any questions.

Best,  
Susanna

Susanna Conine-Nakano  
Office of Mayor London N. Breed  
City & County of San Francisco  
1 Dr. Carlton B. Goodlett Place, Room 200  
San Francisco, CA 94102  
415-554-6147