

CITY AND COUNTY OF SAN FRANCISCO

GRANT AGREEMENT

between

CITY AND COUNTY OF SAN FRANCISCO

and

INSTITUTE ON AGING

THIS GRANT AGREEMENT (this "Agreement") is made this 1st day of **July, 2019**, in the City and County of San Francisco, State of California, by and between **Institute On Aging, 3575 Geary Boulevard San Francisco, CA 94118** ("Grantee") and the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation ("City") acting by and through the Agency (as hereinafter defined),

WITNESSETH:

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

Community Living Fund program; and

WHEREAS, the Grant is funded with Federal dollars, CFDA #98.778 and

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

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

**ARTICLE 1
DEFINITIONS**

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

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

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

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

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

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

- (f) “**Controller**” shall mean the Controller of City.
- (g) “**Eligible Expenses**” shall have the meaning set forth in Appendix A,
- (h) “**Event of Default**” shall have the meaning set forth in Section 11.1.
- (i) “**Fiscal Quarter**” shall mean each period of three (3) calendar months commencing on July 1, October 1, January 1 and April 1, respectively.
- (j) “**Fiscal Year**” shall mean each period of twelve (12) calendar months commencing on July 1 and ending on June 30 during all or any portion of which this Agreement is in effect.
- (k) “**Funding Request**” shall have the meaning set forth in Section 5.3(a).
- (l) “**Grant Funds**” shall mean any and all funds allocated or disbursed to Grantee under this Agreement.
- (m) “**Grant Plan**” shall have the meaning set forth in Appendices A and B, or shall mean the plans, performances, events, exhibitions, acquisitions or other activities or matter described in the Application documents; provided, however, that in the event of any inconsistency in such description, the most recent of the conflicting documents shall govern.
- (n) “**HRC**” shall mean the Human Rights Commission of City, or, in light of legal changes in the governing structure, shall mean “**CMD**” or the Contract Monitoring Division of the City.
- (o) “**Indemnified Parties**” shall mean: (i) City, including the Agency and all commissions, departments, agencies and other subdivisions of City; (ii) City's elected officials, directors, officers, employees, agents, successors and assigns; and (iii) all persons or entities acting on behalf of any of the foregoing.
- (p) “**Losses**” shall mean any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, judgments, fees, expenses and costs of whatsoever kind and nature (including legal fees and expenses and costs of investigation, of prosecuting or defending any Loss described above) whether or not such Loss be founded or unfounded, of whatsoever kind and nature.
- (q) “**Publication**” shall mean any report, article, educational material, handbook, brochure, pamphlet, press release, public service announcement, web page, audio or visual material or other communication for public dissemination, which relates to all or any portion of the Grant Plan or is paid for in whole or in part using Grant Funds.
- (r) “**Contractor**” shall mean “Grantee” as certain City Contracting requirements also apply to Grants of the City of San Francisco.

1.2 Additional Terms. The terms “as directed,” “as required” or “as permitted” and similar terms shall refer to the direction, requirement, or permission of the Agency. The terms “sufficient,” “necessary” or “proper” and similar terms shall mean sufficient, necessary or proper in the sole judgment of the Agency. The terms “approval,” “acceptable” or “satisfactory” or similar terms shall mean approved by, or acceptable to, or satisfactory to the Agency. The terms “include,” “included” or “including” and similar terms shall be deemed to be followed by the words “without limitation”. The use of the term

“subcontractor” “successor” or “assign” herein refers only to a subcontractor (“subgrantee”), successor or assign expressly permitted under Article 13.

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

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

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

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

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

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

COMMUNICATION RELATING TO THIS AGREEMENT, THE TERMS OF THIS ARTICLE 2 SHALL GOVERN.

ARTICLE 3 TERM

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

3.2 Duration of Term. The term of this Agreement shall commence on the later of (a) **July 1, 2019** and (b) the effective date specified in Section 3.1. Such term shall end at 11:59 p.m. San Francisco time on) **June 30, 2021**.

Grant term can be extended at the sole discretion of the Agency for an additional two (2) years, subject to the performance of the contractor and the availability of funding.

ARTICLE 4 IMPLEMENTATION OF GRANT PLAN

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

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

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

4.4 Publications and Work Product.

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

(b) Without limiting the obligations of Grantee set forth in subsection (a) above, Grantee shall submit to City for City's prior written approval any Publication, and Grantee shall not disseminate any such Publication unless and until it receives City's consent. In addition, Grantee shall submit to City for approval, if City so requests, any other program material or form that Grantee uses or proposes to use in furtherance of the Grant Plan, and Grantee shall promptly provide to City one copy of all such materials or forms within two (2) days following City's request. The City's approval of any material hereunder

shall not be deemed an endorsement of, or agreement with, the contents of such material, and the City shall have no liability or responsibility for any such contents. The City reserves the right to disapprove any material covered by this section at any time, notwithstanding a prior approval by the City of such material. Grantee shall not charge for the use or distribution of any Publication funded all or in part with the Grant Funds, without first obtaining City's written consent, which City may give or withhold in its sole discretion.

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

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

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

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

ARTICLE 5 USE AND DISBURSEMENT OF GRANT FUNDS

5.1 Maximum Amount of Grant funds.

The amount of the Grant Funds disbursed hereunder shall not exceed **Eight Million Nine Hundred Four Thousand Three Hundred Six Dollars (\$8,904,306)** for the period from **July 1, 2019 to June 30, 2021,** plus any contingent amount authorized by City and certified as available by the Controller.

Contingent amount: Up to Eight Hundred Ninety Thousand Four Hundred Thirty Dollars (\$890,430) for the period from July 1, 2020 to June 30, 2021 (Y2), may be available, in the City's sole discretion as a contingency but only subject to written authorization by the City and if monies are certified as available by the Controller.

The maximum amount of Grant Funds disbursed hereunder shall not exceed **Nine Million Seven Hundred Ninety-Four Thousand Seven Hundred Thirty-Six Dollars (\$9,794,736)** for the period from **July 1, 2019 to June 30, 2021 (Y1-Y2)**.

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

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

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

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

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

5.4 State or Federal Funds:

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

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

General Accounting Office, and are still subject to other audit requirements as specified in 2 CFR Subpart F §200.501

ARTICLE 6
REPORTING REQUIREMENTS; AUDITS;
PENALTIES FOR FALSE CLAIMS

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

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

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

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

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

6.6 Inspection and Audit. Grantee shall make available to City, its employees and authorized representatives, and its Federal and State funders, during regular business hours all of the files, records, books, invoices, documents, payrolls and other data required to be established and maintained by Grantee under Section 6.5. Grantee shall permit City, its employees and authorized representatives to inspect, audit, examine and make excerpts and transcripts from any of the foregoing. The rights of City pursuant to this Section shall remain in effect so long as Grantee has the obligation to maintain such files, records, books, invoices, documents, payrolls and other data under this Article 6.

6.7 Submitting False Claims; Monetary Penalties. Any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the

contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

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

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

ARTICLE 7 TAXES

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

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

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

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

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

7.3. Earned Income Credit (EIC) Forms. Reserved

ARTICLE 8 REPRESENTATIONS AND WARRANTIES

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

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

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

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

8.4 Conflict of Interest.

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

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

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

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

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

ARTICLE 9 INDEMNIFICATION AND GENERAL LIABILITY

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

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

9.3 Incidental and Consequential Damages. Losses covered under this Article 9 shall include any and all incidental and consequential damages resulting in whole or in part from Grantee's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that any Indemnified Party may have under applicable law with respect to such damages.

9.4 LIMITATION ON LIABILITY OF CITY. CITY'S OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AGGREGATE AMOUNT OF GRANT FUNDS ACTUALLY DISBURSED HEREUNDER. NOTWITHSTANDING ANY OTHER PROVISION CONTAINED IN THIS AGREEMENT, THE APPLICATION DOCUMENTS OR ANY OTHER DOCUMENT OR COMMUNICATION RELATING TO THIS AGREEMENT, IN NO EVENT SHALL

CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON GRANT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE GRANT FUNDS, THE GRANT PLAN OR ANY ACTIVITIES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

ARTICLE 10 INSURANCE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 11 EVENTS OF DEFAULT AND REMEDIES

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

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

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

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

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

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

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

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

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

11.2 Termination for Convenience

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

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

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

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

(3) Terminating all existing orders and subgrants.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

whether City has approved the disbursement of the Grant Funds requested in any Funding Request. Any Grant Funds withheld pursuant to this Section and subsequently disbursed to Grantee after cure of applicable Events of Default shall be disbursed without interest.

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

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

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

ARTICLE 12 DISCLOSURE OF INFORMATION AND DOCUMENTS

12.1 Protection of Private Information.

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

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

c. **Proprietary and Confidential Information of City.** Grantee understands and acknowledges that, in the performance of this Agreement or in contemplation thereof, Grantee may have access to private or confidential information that may be owned or controlled by City and that such information may contain proprietary or confidential information, the disclosure of which to third parties may be damaging to City. Grantee agrees that all information disclosed by City to Grantee shall be held in confidence and used only in the performance of this Agreement. Grantee shall exercise the same

standard of care to protect such information as a reasonably prudent nonprofit entity would use to protect its own proprietary or confidential data.

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

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

ARTICLE 13 ASSIGNMENTS AND SUBCONTRACTING

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

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

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

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

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

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

ARTICLE 14 INDEPENDENT CONTRACTOR STATUS

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

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

14.3 Consequences of Recharacterization.

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

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

(c) A determination of employment status pursuant to either subsection (a) or (b) of this Section 14.3 shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Grantee shall not be considered an employee of City. Notwithstanding the foregoing, if any court, arbitrator, or administrative authority determine that Grantee is an employee for any other purpose, Grantee agrees to a reduction in City's financial liability hereunder such that the aggregate amount of Grant Funds under this Agreement does not exceed what would have been the amount of such Grant Funds had the court, arbitrator, or administrative authority had not determined that Grantee was an employee.

**ARTICLE 15
NOTICES AND OTHER COMMUNICATIONS**

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

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

If to Grantee: Institute On Aging
 3575 Geary Boulevard
 San Francisco, CA 94118
 Attn: J. Thomas Briody
 Email: tbriody@ioaging.org

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

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

**ARTICLE 16
COMPLIANCE**

16.1 Local Business Enterprise Utilization; Liquidated Damages. Reserved.

16.2 Nondiscrimination; Penalties.

(a) **Grantee Shall Not Discriminate.** In the performance of this Agreement, Grantee agrees not to discriminate against any employee, City and County employee working with such grantee or subgrantee, applicant for employment with such grantee or subgrantee, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

(b) **Subcontracts.** Grantee shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all

subgrantees to comply with such provisions. Grantee's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

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

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

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

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

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

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

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

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

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

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

16.8. Requiring Minimum Compensation for Covered Employees

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

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

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

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

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

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

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

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

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

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

16.10 First Source Hiring Program.

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

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

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

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

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

(4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements

shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

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

(6) Set the term of the requirements.

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

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

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

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

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

e. Liquidated Damages. Contractor agrees:

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

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

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

(4) That the continued failure by a Contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public,

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

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

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

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

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

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

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

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

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

Accordingly, an employee working in any position funded under this Agreement shall not engage in any Political Activity during the work hours funded hereunder, nor shall any equipment or resource funded by this Agreement be used for any Political Activity. In the event Grantee, or any staff member in association with Grantee, engages in any Political Activity, then (i) Grantee shall keep and maintain appropriate records to evidence compliance with this section, and (ii) Grantee shall have the burden to prove that no funding from this Agreement has been used for such Political Activity. Grantee agrees to cooperate with any audit by the City or its designee in order to ensure compliance with this section. In the event Grantee violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement and any other agreements between Grantee

and City, (ii) prohibit Grantee from bidding on or receiving any new City grant for a period of two (2) years, and (iii) obtain reimbursement of all funds previously disbursed to Grantee under this Agreement.

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

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

16.14 Public Access to Meetings and Records. If the Grantee receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, the Grantee shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Grantee agrees to open its meetings and records to the public in the manner set forth in Sections 12L.4 and 12L.5 of the Administrative Code. The Grantee further agrees to make good-faith efforts to promote community membership on its Board of Directors in the manner set forth in Section 12L.6 of the Administrative Code. The Grantee acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Grantee further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

16.15 Consideration of Criminal History in Hiring and Employment Decisions.

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

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

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

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

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

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

(g) Contractor and Subcontractors shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE’s website, in a conspicuous place at every workplace, job site, or other location under the Contractor or Subcontractor’s control at which work is being done or will be done in furtherance of the performance of this Agreement. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

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

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

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

16.18 Slavery Era Disclosure. Reserved

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

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

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

ARTICLE 17 MISCELLANEOUS

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

by the Agency or City of any action requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.

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

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

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

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

17.6 Entire Agreement. This Agreement and the Application Documents set forth the entire Agreement between the parties, and supersede all other oral or written provisions. If there is any conflict between the terms of this Agreement and the Application Documents, the terms of this Agreement shall govern. The following appendices are attached to and a part of this Agreement:

- Appendix A, Services to be Provided
- Appendix B, Budget
- Appendix C, Method of Payment
- Appendix D, Interests in Other City Grants
- Appendix E, Permitted Subgrantees
- Appendix F, HIPPA Business Associate Addendum
- Appendix G, Federal Award Information for Subrecipients
- Appendix H, Federal Requirements for Subrecipients

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

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

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

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

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

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

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

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

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

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

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

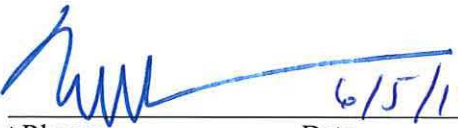
17.13 Cooperative Drafting. This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

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

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

CITY

HUMAN SERVICES AGENCY

By:  6/5/19
Trent Rhorer Date
Executive Director
Human Services Agency

GRANTEE:

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

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

INSTITUTE ON AGING

By:  5-15-19
Date

Name: J. Thomas Briody
Title: President & Chief Executive Officer
Address: 3575 Geary Boulevard
City, State ZIP: San Francisco, CA 94118

Phone: (415) 750-4100

Federal Tax ID #: 94-2978977
City Vendor Number: 0000018304
DUNS Number : 825965486

Approved as to Form:

Dennis J. Herrera
City Attorney

By:  6/4/19
David Ries Date
Deputy City Attorney

Appendix A – Services to be Provided

Effective July 1, 2019 to June 30, 2021

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

I. Purpose of Grant

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

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

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

The purposes of the Community Living Fund are to:

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

II. Eligibility for Services under the CLF Program

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

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

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

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

III. Definitions

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

DAAS: Department of Aging and Adult Services

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

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

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

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

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

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

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

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

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

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

III. Target Population

The CLF Program will serve people whose incomes are up to 300% of the federal poverty level and who are unable to live safely in the community without appropriate supports.

The following groups of people will be served:

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

IV. Description of Services

Program infrastructure must include, at a minimum:

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

Purchase of Services Component

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

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

The Grantee will:

- Coordinate all case management services through clinical supervision; including collaboration between multidisciplinary staff, across all sub-contracted organizations, through weekly scheduled case conferencing. There must be strong collaboration to share expertise.
- Work collaboratively with other community organizations presently working with the client and additional ones who can provide specific expertise.
- Ensure that the purchase of all proposed goods and services is reasonable, prudent and properly procured.
- Work collaboratively with DAAS to strategize program direction and be responsive in addressing programmatic and contractual issues in an efficient and effective manner.
- Develop and maintain collaborations with both City departments and community-based organizations in order to reach a target population reflective of San Francisco's diverse population and eligible for the services supported by the CLF program.
- Support a CLF Advisory Council to provide a forum for consumer and community feedback. Members should include current and former program participants as well as representatives from community agencies.
- Mail out consumer satisfaction surveys annually (at a minimum) to gather additional input from participants regarding their direct experience in an anonymous format.
- Work closely with DAAS Planning Unit to ensure appropriate and accurate collection of data for evaluation and program design analysis. In addition, Grantee will work with DAAS in an ongoing evaluation of the program.
- Continue to utilize the CLF dedicated database--developed with RTZ Associates Inc. for the CLF program that tracks client information, assessments, care plans, progress notes, service authorizations and purchased services.
- Continue to explore potential opportunities from state and federal resources for revenue offsets to ensure that CLF is a payor of last resort.

V. Department Responsibilities (DAAS)

DAAS Intake and Screening Unit. All referrals to the CLF Program come through the DAAS Intake and Screening Unit, which is the initial entry point for accessing the fund. This Unit is the "Hub" of the "No Wrong Door" model of improved access to services. While community-based long-term care services can be accessed in many ways, CLF is the fund of last resort and any request for support from the CLF Program must come through this Unit. The DAAS Intake and Screening Unit completes an initial screening and refers those presumed eligible for the fund to the Grantee for the CLF Program.

DAAS will access other funding. DAAS will leverage CLF Program funding by qualifying for state and federal funding available through programs such as the Community Services Block

Grant (CSBG). The Grantee is required to provide time certifications for staff involved in service delivery and service support activities.

VI. Collaborative Responsibilities (DAAS and Grantee)

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

The DAAS Program Analyst, the DAAS Intake and Screening Unit, and the Grantee will collaborate on undertaking outreach activities, as necessary, to ensure that the needs of the groups of people in the target population are identified and addressed. DAAS and the Grantee will also work collaboratively with LHH to ensure referral pipeline for scattered site housing units is sufficient and ongoing.

The DAAS Program Analyst, in collaboration with the DAAS Director of Quality Management, will work with the CLF Director to develop a quality assurance plan and process that fulfills the needs of both parties and the clients.

VII. Service Objectives

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

- Objective 1. Number of unduplicated consumers receiving intensive case management and/or purchased services. Target = 425.
- Objective 2. Number of clients newly enrolled in CLF. Target = 175.

VIII. Outcome Objectives

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

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

- Objective 1. Successfully support community living for a period of at least six months for at least 80% of CLF clients who are being discharged from LHH at the time of enrollment. Identify reasons for re-institutionalization when it occurs.
- Objective 2. At least 80% of care plan problems resolved, on average, after one year of enrollment in CLF (excluding clients with ongoing purchases).
- Objective 3. At least 80% of respondents believe that CLF services helped maintain or improve their ability for successful community living.

IX. Reporting Requirements

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

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

Fanny Lapitan, Program Analyst
 Long Term Care Operations
 Department of Aging and Adult Services
 PO Box 7988
 San Francisco, CA 94120

Fanny.Lapitan@sfgov.org

David Kashani, Contract Manager
 Office of Contracts Management
 Human Services Agency
 PO Box 7988
 San Francisco, CA 94120

David.Kashani@sfgov.org

X. Monitoring Activities

- A. Program Monitoring: Program monitoring will include review of compliance to specific program standards or requirements; client eligibility and targeted mandates, back up documentation for the units of service and all reporting, and progress of service and outcome objectives; how participant records are collected and maintained; reporting performance including monthly service unit reports, maintenance of service unit logs;

agency and organization standards, which include current organizational chart, evidence of provision of training to staff regarding the Elder Abuse Reporting; program operation, which includes a review of a written policies and procedures manual, written project income policies if applicable, grievance procedure posted in the center/office, and also given to the consumers who are homebound, hours of operation are current according to the site chart; a board of director list and whether services are provided appropriately according to Sections VII and VIII.

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

	A	B	C	D
1	Appendix B, Page 1			
2	Document Date: 02/14/19			
3	HUMAN SERVICES AGENCY GRANT BUDGET SUMMARY			
4	BY PROGRAM			
5	Name	Term		
6	Institute on Aging	July 1, 2019 - June 30, 2021		
7	(Check One) New <input checked="" type="checkbox"/> Renewal <input type="checkbox"/> Modification <input type="checkbox"/>			
8	If modification, Effective Date of Mod.		No. of Mod.	
9	Program: Community Living Fund			
10	Budget Reference Page No.(s)			Total
11	Program Term	FY 19-20	FY 20-21	7/1/19-6/30/21
12	Expenditures			
13	Salaries & Benefits	\$1,732,875	\$1,722,750	\$3,455,625
14	Operating Expense	\$278,890	\$278,890	\$557,780
15	Subtotal	\$2,011,765	\$2,001,640	\$4,013,405
16	Indirect Percentage (%)	15%	15%	15%
17	Indirect Cost (Line 16 X Line 15)	\$301,765	\$300,246	\$602,011
18	Capital & Subcontract Expenditures	\$469,881	\$455,525	\$925,406
19	Indirect from Subcontracts	\$12,750	\$12,750	\$25,500
20	Sub-total Expenditures	\$2,796,161	\$2,770,161	\$5,566,322
21	Purchase of Services	\$1,655,992	\$1,681,992	\$3,337,984
22				
23	TOTAL EXPENDITURES	\$4,452,153	\$4,452,153	\$8,904,306
24	HSA-DAAS Revenues			
25				
26	General Fund	\$3,355,832	\$3,355,832	\$6,711,664
27	Federal 98.778	\$1,096,321	\$1,096,321	\$2,192,642
28				
29	TOTAL REVENUE (Includes all sources)	\$4,452,153	\$4,452,153	\$8,904,306
30				
31				
32				
33	Total Revenues	\$4,452,153	\$4,452,153	\$8,904,306
34	Full Time Equivalent (FTE)			
36	Prepared by: Dustin Harper	Telephone No.: 41		2/14/2017
37	HSA-CO Review Signature:	_____		
38	HSA #1			11/15/2007

Program: Community Living Fund
 (Same as Line 9 on HSA #1)

Salaries & Benefits Detail

	A	B	C	D	E	F	G	H
1								
2								
3								
4								
5								
6								
7								
8		Agency Totals		For HSA Program		FY 19-20	FY 20-21	TOTAL
9	POSITION TITLE	Annual Full Time Salary for FTE	Total % FTE	% FTE	Adjusted FTE	Budgeted Salary	Budgeted Salary	7/1/19-6/30/21
10	Program Director	98,000	100%	90%	90%	\$88,200	\$88,200	\$176,400
11	Clinical Supervisor	88,000	100%	100%	100%	\$88,000	\$88,000	\$176,000
12	Clinical Supervisor	88,000	100%	100%	100%	\$88,000	\$88,000	\$176,000
13	Clinical Supervisor (LCSW Hours)	88,000	100%	10%	10%	\$8,800	\$8,800	\$17,600
14	Regional Director, Community Living	136,000	100%	25%	25%	\$34,000	\$34,000	\$68,000
15	Accounting Coordinator 1	52,000	100%	100%	100%	\$52,000	\$52,000	\$104,000
16	VP of Community Living	190,000	100%	15%	15%	\$28,500	\$28,500	\$57,000
17	Sr. Program Coordinator	50,000	100%	100%	100%	\$50,000	\$50,000	\$100,000
18	Director of Quality Improvement	130,000	100%	20%	20%	\$26,000	\$26,000	\$52,000
19	Care Manager 1	68,000	100%	100%	100%	\$68,000	\$68,000	\$136,000
20	Care Manager 2	80,000	100%	100%	100%	\$80,000	\$80,000	\$160,000
21	Care Manager 3	68,000	100%	100%	100%	\$68,000	\$68,000	\$136,000
22	Care Manager 4	68,000	100%	100%	100%	\$68,000	\$68,000	\$136,000
23	Care Manager 5	80,000	100%	100%	100%	\$80,000	\$80,000	\$160,000
24	Care Manager 6	68,000	100%	100%	100%	\$68,000	\$68,000	\$136,000
25	Care Manager 7	68,000	100%	100%	100%	\$68,000	\$68,000	\$136,000
26	Care Manager 8	82,000	100%	100%	100%	\$82,000	\$82,000	\$164,000
27	Care Manager 9	68,000	100%	100%	100%	\$68,000	\$68,000	\$136,000
28	Care Manager 10	68,000	100%	100%	100%	\$68,000	\$68,000	\$136,000
29	OT Consultant	95,000	100%	100%	100%	\$95,000	\$95,000	\$190,000
30	Psychologist Consultant	98,000	100%	40%	40%	\$39,200	\$39,200	\$78,400
31	RN Consultant	105,000	100%	10%	10%	\$10,500	\$10,500	\$21,000
32	Medi-Cal Biller	54,000.00	100%	30%	30%	\$8,100		\$8,100
33	Care Manager 11	52,000	100%	100%	100%	\$52,000	\$52,000	\$104,000
34		\$2,042,000	24.00	18.30	18.40	\$1,386,300	\$1,378,200	\$2,764,500
35	TOTALS							
36								
37	FRINGE BENEFIT RATE	25.00%	25%			\$346,575	\$344,550	\$691,125
38	EMPLOYEE FRINGE BENEFITS	\$510,500						
39								
40	TOTAL SALARIES & BENEFITS	\$2,552,500				\$1,732,875	\$1,722,750	\$3,455,625
41	HSA #2							11/15/2007
42								

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

Purchase of Service Detail

<u>Purchase of Service Category</u>	<u>TERM</u>	<u>FY 19-20</u>	<u>FY 20-21</u>	<u>TOTAL</u>
Global Purchase of Services		\$1,655,992	\$1,681,992	\$3,337,984
TOTAL PURCHASE OF SERVICE EXPENSE		\$1,655,992	\$1,681,992	\$3,337,984
HSA #4				5/23/2013

Program: Community Living Fund
 (Same as Line 9 on HSA #1)

Program Expenditure Detail

SUBCONTRACTORS		FY 19-20	FY 20-21	7/1/19-6/30/21
	Catholic Charities	\$158,700	\$158,700	\$317,400
	Self-Help for the Elderly	\$157,450	\$157,450	\$314,900
	Conard House	\$113,850	\$113,850	\$227,700
	Temporary Contract Employees	\$13,881	\$25,525	\$39,406
TOTAL SUBCONTRACTOR COST		\$443,881	\$455,525	\$899,406

EQUIPMENT	TERM	FY 19-20	FY 20-21	7/1/19-6/30/21
No.	ITEM/DESCRIPTION			
	NetSuite Vendor system	\$26,000		\$26,000
				\$0
				\$0
TOTAL EQUIPMENT COST		\$26,000	\$0	\$26,000

R E M O D E L I N G			
Description:	FY 19-20	FY 20-21	7/1/19-6/30/21
			\$0
			\$0
TOTAL REMODELING COST	\$0	\$0	\$0

TOTAL CAPITAL/SUBCONTRACTOR EXPENDITURE	\$469,881	\$455,525	\$925,406
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Appendix C – Method of Payment

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

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

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

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

Funding Agency: _____ CFDA or other Identification #: 98.778

1. _____
2. _____
3. _____
4. _____

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

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

1. All contractual compliance requirements must be current, i.e., reports submitted and approved, corrective actions resolved, business tax and insurance certificates in place, prompt and fully documented billings.
 2. The Grantee shall submit a written request with a narrative justification that fully describes the unique circumstances to the Program Manager and Contract Manager for review and approval.
 3. Final invoice from the preceding fiscal year must be received prior to advance distribution.
- IX. Timely Submission of Reports – If reports/documents are required, Grantee shall submit these reports prior to submitting invoices. Failure to submit required reports/documents in CARBON by specified deadlines may result in withholding of grant payments.
- X. Timely and Complete Submission of Time Study- Failure to submit required time study by specified deadlines may result in withholding of grant payments.

Appendix D-Interests In Other City Grants

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

City Department or Commission	Date of Grant	Amount of Grant
*See attached		

3-22-19

Contracts

Below is a statement listing all relevant contracts during the last three years. All contracts are in good standing.

Program Name/Type of Service	Term of Contract	Contract Amount	Location of Services	Funding Agency
Support at Home		\$4,550,000	San Francisco	San Francisco Human Services Agency
Community Living Fund/ Care Management HDAP	7/1/16-6/30/17 7/1/17-6/30/18 7/1/18-6/30/19 7/1/18-6/30/19	\$4,645,156 \$4,062,496 \$4,714,857 \$257,392	San Francisco	San Francisco Human Services Agency,
Linkages Case Management / Linkages	7/1/14-6/30/17 7/1/17-6/30/18 7/1/18-6/30/21	\$687,136 (\$343,568/yr) \$382,968 \$1,548,189 (\$516,063)	San Francisco	SF Human Services Agency
Case Management	7/1/14-6/30/17 7/1/17-6/30/18	\$315,185 (\$105,062/yr) \$114,542	San Francisco	SF Human Services Agency
Case Management & Clinical Supervision	7/1/14-6/30/17 7/1/17-6/30/18 7/1/18-6/30/20	\$329,704 (\$109,901/yr) \$114,870 \$240,244 (\$120,122/yr)	San Francisco	SF Human Services Agency
Alzheimer's Day Care Resource Center/Day Program for People with Dementia	7/1/16-6/30/17 7/1/17-6/30/18 7/1/18-6/30/19	\$89,450 \$91,686 \$103,978	San Francisco	SF Human Services Agency
Home Delivered Meals-Young Adults with Disabilities	7/1/16-6/30/17 7/1/17-6/30/18 7/1/18-6/30/20	\$293,479 \$303,400 \$696,606 (\$348,303/yr)	San Francisco	SF Human Services Agency
Elder Abuse Prevention/Com munity & Professional Education, EAP	7/1/16-6/30/17 7/1/17-6/30/18 7/1/18-6/30/19	\$118,604 \$122,290 \$126,264	Bay Area	SF Human Services Agency
Friendship Line/Senior Suicide Hotline	7/1/16-6/30/17 7/1/17-6/30/18 7/1/18-6/30/19	\$290,391 \$338,757 \$485,273	Northern California	SF Human Services Agency

& Emotional Support				
Clinical Supervisor Collaborative	7/1/14-6/30/17 7/1/17-6/30/18 7/1/18-6/30/21	\$615,000 (\$205,000/yr) \$215,378 \$887,286 (\$295,792/yr)	San Francisco	SF Human Services Agency
Elder Abuse Forensic Center/Collaboration with SFPD, SFDA, APS & IOA to prosecute elder abuse	7/1/16-6/30/17 7/1/17-6/30/18 7/1/18-6/30/19	\$90392 \$105,638 \$132,249	San Francisco San Francisco	SF Human Services Agency
Adult Day Care	7/1/16-6/30/17 7/1/17-6/30/18 7/1/18-6/30/19	\$98,469 \$100,930 \$113,454	San Francisco	SF Human Services Agency
Multi-Purpose Senior Service Program	7/1/18-6/30/19	\$300,000	San Francisco	SF Human Services Agency

Appendix E-Permitted Subcontractors

NOTE:

CATHOLIC CHARITIES

SELF-HELP FOR THE ELDERLY

CONARD HOUSE

APPENDIX F
City and County of San Francisco
Business Associate Agreement

This Business Associate Agreement (“BAA”) supplements and is made a part of the agreement by and between the City and County of San Francisco, the Covered Entity (“CE”), and Institute on Aging (“Contractor”), the Business Associate (“BA”), dated July 1, 2019 (“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 Human Services Agency (“HSA”), 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 and this BAA, 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 an agreement containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(a) and (e) and 164.504(e) of the Code of Federal Regulations (“C.F.R.”) and contained in this BAA.

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. Part 164, Subpart D.

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

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

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

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

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

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

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

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

k. Protected Health Information or PHI means any information, including electronic PHI, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to

believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Sections 160.103 and 164.501. For the purposes of this BAA, PHI includes all medical information and health insurance information as defined in California Civil Code Sections 56.05 and 1798.82.

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

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

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

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

2. Obligations of Business Associate.

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

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

c. Permitted Disclosures. BA shall disclose Protected Information only for the purpose of performing BA's obligations for, or on behalf of, the City and as permitted or

required under the Agreement and BAA, or as required by law. BA shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by CE. However, BA may disclose Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE. If BA discloses Protected Information to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this BAA and used or disclosed only as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BA of any breaches, security incidents, or unauthorized uses or disclosures of the Protected Information in accordance with paragraph 2 (n) of this BAA, to the extent it has obtained knowledge of such occurrences [42 U.S.C. Section 17932; 45 C.F.R. Section 164.504(e)]. BA may disclose PHI to a BA that is a subcontractor and may allow the subcontractor to create, receive, maintain, or transmit Protected Information on its behalf, if the BA obtains satisfactory assurances, in accordance with 45 C.F.R. Section 164.504(e)(1), that the subcontractor will appropriately safeguard the information [45 C.F.R. Section 164.502(e)(1)(ii)].

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

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

f. Business Associate's Subcontractors and Agents. BA shall ensure that any agents and subcontractors that create, receive, maintain or transmit Protected Information on

behalf of BA, agree in writing to the same restrictions and conditions that apply to BA with respect to such PHI and implement the safeguards required by paragraph 2.f. above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2) through (e)(5); 45 C.F.R. Section 164.308(b)]. BA shall mitigate the effects of any such violation.

g. Accounting of Disclosures. Within ten (10) calendar days of a request by CE for an accounting of disclosures of Protected Information or upon any disclosure of Protected Information for which CE is required to account to an individual, BA and its agents and subcontractors shall make available to CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935 (c), as determined by CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents and subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an Electronic Health Record. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure [45 C.F.R. 164.528(b)(2)]. If an individual or an individual's representative submits a request for an accounting directly to BA or its agents or subcontractors, BA shall forward the request to CE in writing within five (5) calendar days.

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

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

within five (5) days of the request and of any approval or denial of amendment of Protected Information maintained by BA or its agents or subcontractors [45 C.F.R. Section 164.504(e)(2)(ii)(F)].

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

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

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

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

Notifications to CE shall be made to;
San Francisco Human Services Agency
Privacy Office:
HSAPrivacyOffice@sfgov.org
Information Security Office: HSA.IT.Information.Security@sfgov.org

n. Breach Pattern or Practice by Business Associate’s Subcontractors and Agents. Pursuant to 42 U.S.C. Section 17934(b) and 45 C.F.R. Section 164.504(e)(1)(iii), if the

BA knows of a pattern of activity or practice of a subcontractor or agent that constitutes a material breach or violation of the subcontractor or agent's obligations under the Agreement or this BAA, the BA must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the BA must terminate the contractual arrangement with its subcontractor or agent, if feasible. BA shall provide written notice to CE of any pattern of activity or practice of a subcontractor or agent that BA believes constitutes a material breach or violation of the subcontractor or agent's obligations under the Contract or this BAA within five (5) calendar days of discovery and shall meet with CE to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

3. Termination.

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

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

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

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

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

4. Amendment to Comply with Law.

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

5. Reimbursement for Fines or Penalties.

In the event that CE pays a fine to a state or federal regulatory agency, and/or is assessed civil penalties or damages through private rights of action, based on an impermissible use or disclosure of PHI by BA or its subcontractors or agents, then BA shall reimburse CE in the amount of such fine or penalties or damages within thirty (30) calendar days from City's written notice to BA of such fines, penalties or damages.

Appendix G- Federal Award Information for Subrecipients

	E	F	G	H	I	J	K	L	M	N	O	P
	Service	CFDA	CFDA Title	Other Name, if any	Federal awarding agency	Known (and anticipated) Federal Prime Award Numbers and Award periods	Known Federal Award Date	Uniform Guidance Effective Date	Pass-Through Agency (from Federal to CCSP), if applicable	Known (and anticipated) Pass-Through Award Identifying Information and Award periods	Federal award amount, Actual (and Anticipated) to CCSP	Research & Development Award?
8												
13	Community Living Fund (IOA)	93.778	Medical Assistance Program	Medi-Cal	Department of Health and Human Services	Not available at this time	Not available at this time	Assumed to be 1/1/2015	California Department of Health Care Services	N/A: Annual subvention funding	Anticipating estimated \$75,000,000 annually	No

Appendix H

Federal Requirements for Subrecipients: Provisions for All Federal Funds Subawards and Matching Funds to Federal Funds

I. Definitions

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

- A. **City** means the City and County of San Francisco.
- B. **Subaward** means an award provided by a pass-through entity (e.g. the City) to a **Subrecipient** for the Subrecipient to carry out all or part of a Federal award. It does not include payments to an individual that is a beneficiary of a Federal program (2 CFR §200.92). Characteristics of Subawards, as opposed to Subcontracts, include but are not limited to that a Subrecipient
 - i. Has programmatic decision-making responsibility within the Scope of Services of the agreement
 - ii. May determine client eligibility for the federal program
 - iii. In accordance with its agreement, uses the Federal funds to carry out all or part of Federal a program, as opposed to providing goods or services to help the City administer the Federal program.
 - iv. See 2 CFR §200.330 for more guidance.
- C. **Third Party Subaward** means a Subaward at any tier entered into by a Subrecipient, financed in whole or in part with Federal assistance originally derived from the Federal awarding agency.
- D. **Contract and/or Subcontract** means a legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award (2 CFR §200.22). Characteristics of Subcontracts, as opposed to Subawards, include but are not limited that to a **Subcontractor**
 - i. Has little or no programmatic decision-making responsibility in how it carries out the purpose of the Contract
 - ii. Does not determine client eligibility for the federal program
 - iii. Provides goods or services that are ancillary to the operation of the Federal program and/or that help the City administer the Federal program.
 - iv. See 2 CFR §200.330 for more guidance.
- E. **Third Party Subcontract** means a Subcontract at any tier entered into by Contractor or Subcontractor, financed in whole or in part with Federal assistance originally derived from the Federal awarding agency.

II. Federal Changes

- A. Subrecipient shall at all times comply with all applicable regulations, policies, procedures and Federal awarding agency directives, including without limitation those listed directly or by reference in the Master Agreement between the City and the Federal awarding agency or in the Grant Program Guidelines, as they may be amended or promulgated from time to time during the term of this Agreement. Subrecipient's failure to so comply shall constitute a material breach of this agreement.

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

- A. For any Third Party Subawards that the Subrecipient enters into in the course of carrying out this agreement the Subrecipient shall include
 - i. Federal award information as specified in 2 CFR §200.331(a)(1) to the best of its knowledge.
 - ii. Requirements imposed by the Federal awarding agency, the City, or itself in order to meet its own responsibility to the City under this Subaward.
 - iii. An approved federally recognized indirect cost rate negotiated between the Subrecipient and the Federal Government or. If no such rate exists, either a rate negotiated between the Subrecipient and its Third Party Subrecipients, or a de minimis indirect cost rate as defined in §200.414 Indirect (F&A) costs, paragraph (f);
 - iv. A requirement that the Third Party Subrecipient permit the Subrecipient, the City, higher level funders, and auditors to have access to the Subrecipient's records and financial statements as necessary for the Subrecipient to meet the requirements of this part; and
 - v. Appropriate terms and conditions concerning closeout of the Subaward.
- B. For any Third Party Subawards that the Subrecipient enters into in the course of carrying out this agreement, the Subrecipient agrees to
 - i. Evaluate each Third Party Subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the Subaward for purposes of determining the appropriate Subrecipient monitoring described in paragraphs (iii) of this section,
 - ii. Consider imposing specific Subaward conditions upon a Third Party Subrecipient if appropriate as described in 2 CFR §200.207 Specific conditions.
 - iii. Monitor the activities of the Third Party Subrecipient as necessary to ensure that the Subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the Subaward; and that Subaward performance goals are achieved. See 2 CFR §200.331(d) and (e) for specific requirements.

- iv. Verify that every Third Party Subrecipient is audited as required by 2 CFR §200 Subpart F—Audit Requirements of this part when it is expected that the Subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in 2 CFR §200.501 Audit requirements.
- v. Consider whether the results of the Third Party Subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records.
- vi. Consider taking enforcement action against noncompliant Third Party Subrecipients as described in 2 CFR §200.338 Remedies for noncompliance of this part and in program regulations.

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

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

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

- A. Subrecipient agrees to comply with the Cost Principle specified in 2 CFR § 200 Subpart E for all costs that are allowable and included in this agreement with the City. This includes but is not limited to compliance with the following
- B. §200.430 Compensation – personal services, including §200.430(i) regarding Standards for Documentation for Personnel Expense. Charges to Federal awards for salaries and wages must be based on records that accurately reflect the actual work performed. The requirements for these records include but are not limited to that they
 - i. Be supported by a system of internal control which provides reasonable assurance that the charges are accurate, allowable, and properly allocated;
 - ii. Be incorporated into the official records of the Subrecipient;
 - iii. Reasonably reflect the total activity for which the employee is compensated by the Subrecipient, not exceeding 100% of compensated activities;

- iv. Encompass both federally assisted and all other activities compensated by the Subrecipient on an integrated basis, but may include the use of subsidiary records as defined in the Subrecipient's written policy;
- v. Comply with the established accounting policies and practices of the Subrecipient;
- vi. Support the distribution of the employee's salary or wages among specific activities or cost objectives if the employee works on more than one Federal award; a Federal award and non-Federal award; an indirect cost activity and a direct cost activity; two or more indirect activities which are allocated using different allocation bases; or an unallowable activity and a direct or indirect cost activity.
- vii. Budget estimates alone do not qualify as support for charges to Federal awards, but may be used for interim accounting purposes in certain conditions (see §200.430(i)(1)(viii)).
- viii. In accordance with Department of Labor regulations implementing the Fair Labor Standards Act (FLSA) (29 CFR part 516), charges for the salaries and wages of nonexempt employees, in addition to the supporting documentation described in this section, must also be supported by records indicating the total number of hours worked each day.
- ix. Salaries and wages of employees used in meeting cost sharing or matching requirements on Federal awards must be supported in the same manner as salaries and wages claimed for reimbursement from Federal awards.
- x. A Subrecipient whose the records may not meet the standards described in this section shall use personnel activity reports (also known as time studies), prescribed certifications for employees working 100% on the same Federal program, or equivalent documentation as supporting documentation.

VI. Equal Employment Opportunity Compliance *(applicable to all construction agreements awarded in excess of \$10,000 by grantees and their contractors or subgrantees; 2 CFR §200 Appendix II(c))*
 Subrecipient agrees to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Part 60).

VII. Davis-Bacon Act Compliance *(applicable to construction agreements in excess of \$2,000 awarded by grantees and subgrantees when required by Federal grant program legislation; 2 CFR §200 Appendix II(d))*
 Subrecipient agrees to comply with the Davis-Bacon Act (40 U.S.C. 3141-3418) as supplemented by Department of Labor regulations (29 CFR Part 5).

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

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

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

- A. Compliance:** Subrecipient agrees that it shall comply with Sections 3702 and 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708) as supplemented by Department of Labor regulations (29 CFR Part 5), which are incorporated herein.
- B. Overtime:** No Subrecipient contracting for any part of the work under this Agreement which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- C. Violation; liability for unpaid wages; liquidated damages:** In the event of any violation of the provisions of Paragraph B, the Subrecipient and any Subcontractor responsible therefore shall be liable to any affected employee for his unpaid wages. In additions, such Contractor and Subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph B in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of his standard workweek of forty hours without payment of the overtime wages required by paragraph B.
- D. Withholding for unpaid wages and liquidated damages:** The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Subrecipient or Subcontractor under any such Contract or any other Federal Contract with the same Prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set for in paragraph C of this section.

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

- A.** Title to intangible property (see 2 CFR §200.59 Intangible property) acquired under a Federal award vests upon acquisition in the Subrecipient unless otherwise detailed

elsewhere in this agreement. The Subrecipient must use that property for the originally-authorized purpose, and must not encumber the property without approval of the Federal awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property must occur in accordance with the provisions in 2 CFR §200.313 Equipment paragraph (e).

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

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

- A. Subrecipient represents and warrants that it is not
 - (1) Debarred nor suspended from federal financial assistance programs and activities
 - (2) Proposed for debarment
 - (3) Declared ineligible
 - (4) Voluntarily excluded from participation in covered transactions by any federal department or agency.
- B. Subrecipient agrees that neither Subrecipient nor any of its Third Party Subrecipients or Subcontractors shall enter into any third party Subawards or Subcontracts for any of the work under this Agreement with a third party who is debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs as specified above. 2 CFR §180.220.
 - (1) Subrecipient and Third Party Subrecipients and Subcontractors can meet this requirement with lower level entities by requiring they sign a certification to its effect and/or including such a clause in their contracts/agreements with the lower level entities. It is also required to check those entities' status at the System for Award Management (SAM) at www.sam.gov under Search Records prior to awarding the funds and/or establishing the agreement and also on a regular, but at least annual, basis. To ensure accuracy of the verification, Subrecipient should use the lower level entity's exact name and Unique Entity Identifier (UEI, formerly

known as Data Universal Numbering System number) or Social Security Number or Tax Identification Number (TIN) to perform the query. A copy of the query should be printed and kept on file in case of a review by county staff or funding agencies.

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

A. Subrecipient hereby certifies, to the best of his or her knowledge and belief, that

- i. No Federal appropriated funds have been paid or will be paid, by or on behalf of the person signing this agreement, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal award or contract, the making of any Federal grant or contract, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit, with its offer, OMB Standard Form LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- iii. The person signing this agreement shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loan, and cooperative agreements) and require that all recipients of such awards in excess of \$100,000 shall certify and disclose accordingly.

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

XIII. Single Audit Requirements

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

Subrecipient shall, upon request of the Human Services Agency, submit a copy of the Single Audit within thirty (30) days after receipt of the Auditor's report, or nine (9) months after the

end of the audit period, whichever occurs first, or unless a longer period is agreed to in advance by the cognizant or oversight federal agency.

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

- A. The preceding provisions include, in part, certain standard terms and conditions required by the Federal awarding agency, whether or not expressly set forth in the preceding agreement provisions. All provisions required by the Federal awarding agency, as set forth in 2 CFR Part 200, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all of the Federal awarding agency's mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Subrecipient shall not perform any act, fail to perform any act, or refuse to comply with any City requests that would cause City to be in violation of the Federal awarding agency's terms and conditions.
- B. Further, all provisions of each Federal Awarding Agency's incorporation of the Uniform Guidance are also hereby incorporated as reference.
 - i. US Health and Human Services: 45 CFR Part 75 (includes some exceptions and additions)
 - ii. US Department of Housing and Urban Development: (no exceptions or additions)
 - iii. US Department of Education: (no exceptions).
 - iv. US Department of Agriculture: 2 CFR Part 400

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

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