



## City and County of San Francisco

Mayor's Office of Housing and Community Development  
1 South Van Ness Avenue, 5<sup>th</sup> Floor  
San Francisco, CA 94103

Office of Economic and Workforce Development  
City Hall, Room 448  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

# Amended and Restated Grant Agreement

**Agency Name:** 1064 Mission Homeless Services Center LLC  
**Agency DUNS Number:** N/A  
**Project ID:** N/A  
**Project Description:** Grant funding for development expenses of the Homeless Services Center being constructed by 1064 Mission Homeless Services Center LLC (the "Grantee") on behalf of the Department of Public Health (DPH) and the Department of Homelessness and Supportive Housing (HSH) at 1064-68 Mission  
**Grant Period:** August 1, 2019 – August 1, 2021  
**Total Grant Amount:** \$13,450,689

<b>Funding Sources:</b>	General Fund	\$3,450,689
	Certificates of Participation (DPH)	\$5,000,000
	General Obligation Bond (HSH)	\$5,000,000

### Awarding Agency and Contact Information:

Mayor's Office of Housing and Community Development  
Grants Coordinator: Anne Romero  
Phone Number: 415-701-5525  
Email Address: [anne.romero@sfgov.org](mailto:anne.romero@sfgov.org)

# AMENDED AND RESTATED GRANT AGREEMENT

between

CITY AND COUNTY OF SAN FRANCISCO

and

1064 MISSION HOMELESS SERVICE CENTER LLC

---

**THIS AMENDED AND RESTATED GRANT AGREEMENT** (this “Agreement”) is made this Start Date, in the City and County of San Francisco, State of California, by and between **1064 MISSION HOMELESS SERVICES CENTER LLC**, a California limited liability corporation (“Grantee” or “Contractor”), and the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (“City”), acting by and through the Mayor’s Office of Housing and Community Development or Office of Economic and Workforce Development (“MOHCD/OEWD”).

## ***WITNESSETH:***

**WHEREAS**, Grantee has submitted a grant application to MOHCD/OEWD seeking a grant for the purpose of funding the matters set forth in the Work Program (as defined below);

**WHEREAS**, City has reviewed the grant application, and has agreed to grant certain funds to Grantee on the terms and conditions set forth in this Agreement;

**WHEREAS**, City and Grantee previously entered into that certain Grant Agreement dated \_\_\_\_\_, 2019 (“Predevelopment Grant Agreement”) that is being superseded and replaced in its entirety by this Agreement;

**WHEREAS**, Grantee understands and acknowledges that City is utilizing the City’s **General Fund, Certificates of Participation (DPH) and General Obligation Bonds (HSH)** as the funding source for this Agreement.

**WHEREAS**, Grantee seeks funds for the Work Program, as defined below, and City agrees to provide such funds, on the terms and conditions set forth herein; and,

## **AGREEMENT**

**NOW, THEREFORE**, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

### **ARTICLE 1 DEFINITIONS**

#### **Section 1.01 – 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) “**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.

(c) **"Authorizing Resolutions"** shall mean: (a) in the case of a corporation, a certified copy of resolutions adopted by its board of directors; (b) in the case of a partnership (whether general or limited), a certificate signed by all of its general partners; and (c) in the case of a limited liability company, a certified copy of resolutions adopted by its board of directors or members, satisfactory to the City and evidencing Grantee's authority to execute, deliver and perform the obligations under the City Documents to which Grantee is a party or by which it is bound.

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

(e) **"City"** shall mean the City and County of San Francisco, a municipal corporation, represented by the Mayor, acting by and through MOHCD. Whenever this Agreement provides for a submission to the City or an approval or action by the City, this Agreement refers to submission to or approval or action by MOHCD unless otherwise indicated.

(f) **"CMD"** shall mean the Contract Monitoring Division of the City.

(g) **"Controller"** shall mean the Controller of City.

(h) **"DPH"** shall mean San Francisco Department of Public Health.

(i) **"Effective Date"** shall have the meaning set forth in Section 3.01 below.

(j) **"Event of Default"** shall have the meaning set forth in Section 14.01 below.

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

(l) **"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.

(m) **"Form H"** shall have the meaning set forth in Section 7.03(C) below.

(n) **"Funding Source"** shall mean the federal, state or city program under which MOHCD/OEWD receives the funding from which this grant is made.

(o) **"Grant Amount"** shall mean the total funds authorized for distribution to Grantee under this Agreement, as set forth in Section 5.01 below.

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

(q) **"Homeless"** is defined as:

(1) An individual or family that lacks a fixed, regular, and adequate nighttime residence; and

(2) An individual or family that has a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. This term does not include any individual imprisoned or otherwise detained under an Act of the Congress or a State law.

(r) **"HSC"** shall have the meaning of the Homeless Services Center.

- (s) **“HSH”** shall have the meaning of San Francisco Department of Homelessness and Supportive Housing.
- (t) **“Indemnified Parties”** shall mean: (i) City, including MOHCD/OEWD 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.
- (u) **“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.
- (v) **“MOHCD”** means the Mayor’s Office of Housing and Community Development or its successor.
- (w) **“MOHCD/OEWD Program”** shall mean the federal, state or local funding program that MOHCD/OEWD is administering.
- (x) **“Procedures Manual”** shall mean the MOHCD/OEWD Operating and Procedures Manual, the Capital Implementation Manual, and/or the Small Business Enterprise Program Manual, as appropriate, and as the same may be amended from time to time.
- (y) **“Project”** means the development described in \_\_\_\_\_. If indicated by the context, "Project" means the Site and the improvements developed on the Site.
- (z) **“Project Budget”** shall mean each budget setting forth the uses of Grant Funds for a Work Program identified in Appendix A attached hereto.
- (aa) **“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 Work Program or is paid for in whole or in part using Grant Funds.
- (bb) **“Tenure Period”** shall have the meaning set forth in Section 3.03 below.
- (cc) **“Value of the Building”** shall mean the reasonable monetary value assigned to the building, such as the value assigned by an independent real estate appraiser.
- (dd) **“Work Product”** shall have the meaning set forth in Section 4.03 below.
- (ee) **“Work Program”** shall mean the Grantee’s activities during a Grant Year identified in Appendix A attached hereto.

## **Section 1.02 – Incorporation of Funding Source Requirements**

Grantee understands and acknowledges the limitations and requirements imposed on Grantee as a result of the Funding Sources for this Agreement, as identified on the first page of this Agreement, including Certificates of Participation, General Obligation Bonds, General Fund, as well as applicable federal and/or state regulations and the agreement between City and the federal or state entity, if any, that provided the funds to City for this Agreement. All Grantee agrees that all activities taken by Grantee and its agents under this Agreement shall comply with the applicable program requirements and, if Grantee has any questions regarding such requirements Grantee shall (i) look at the applicable program requirements on file at MOHCD/OEWD, and (ii) seek clarification from MOHCD/OEWD staff.

### **Section 1.03 – Additional Terms**

The terms "as directed," "as required" or "as permitted" and similar terms shall refer to the direction, requirement or permission of MOHCD/OEWD. The terms "sufficient," "necessary" or "proper" and similar terms shall mean sufficient, necessary or proper in the sole judgment of MOHCD/OEWD. The terms "approval," "acceptable" or "satisfactory" or similar terms shall mean approved by, acceptable to or satisfactory to MOHCD/OEWD. 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 7.

### **Section 1.04 – 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 19.02. 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 CERTIFICATION OF GRANT FUNDS; LIMITATIONS ON CITY'S OBLIGATIONS**

### **Section 2.01 – Certification of Controller; Guaranteed Maximum Cost**

No funds shall be available under this Agreement until City's receipt of funds from the Funding Source and prior written authorization certified by the Controller. In addition, as set forth in Section 21.10-1 of the San Francisco Administrative Code:

- (a) City's obligation hereunder shall not at any time exceed the least of (i) the amount certified by the Controller for the purpose and period stated in such certification; (ii) the Grant Amount, as such amount may be amended pursuant to Section 19.02; (iii) the amount of funds actually received by City for the Work Program; and (iv) the costs incurred by Grantee to perform the Work Program as described in Appendix A.
- (b) 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 Work Program unless this Agreement is amended in writing and approved as required by law to authorize such additional services, materials, equipment or supplies. City is not required to pay Grantee for services, materials, equipment or supplies that are provided by Grantee that are beyond the scope of the services, materials, equipment and supplies agreed upon herein and that were not approved by a written amendment to this Agreement having been lawfully executed by City.
- (c) 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.
- (d) 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.

## **Section 2.02 – Superseding 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 EFFECTIVE DATE, TERM AND TENURE PERIOD**

### **Section 3.01 – Effective Date**

This Agreement shall become effective when (i) duly executed by all of the parties and (ii) the Controller has certified to the availability of funds as set forth in Section 2.02 and MOHCD/OEWD has notified Grantee thereof in writing (the "Effective Date").

### **Section 3.02 – Duration of Term**

Time is of the essence in this Agreement. The term of this Agreement shall commence on \_\_\_\_\_, 2020. Such term shall end at 11:59 p.m. San Francisco time on \_\_\_\_\_, 2022. Any funds not expended for eligible costs on or before the expiration or termination date shall be immediately returned to the City, regardless of the reason for the delayed expenditure and regardless of whether Grantee has completed the Work Program.

For all projects that include construction or renovation of facilities, construction must begin as soon as reasonably possible but in no event later than one year after the Effective Date of this Agreement. Without limiting City's right and remedies under this Agreement, any extension of the term of this Agreement is subject to the prior written approval of MOHCD, which approval may be given or denied in MOHCD's sole discretion. If Grantee holds any Grant Funds at the time of the expiration or termination of this Agreement, which Grant Funds were not expended for eligible costs before the expiration or termination date, then Grantee shall immediately notify City of the remaining balance of the unexpended Grant Funds. City will decide either to: (1) extend the term and allow the Grant Funds to be used for identified eligible costs; or (2) require the immediate return of the unexpended Grant Funds; and City will notify Grantee in writing of its decision. Grantee shall not expend any Grant Funds during the period between the expiration or termination date and the date that City notifies Grantee of its decision.

### **Section 3.03 – Tenure Period** - INTENTIONALLY OMITTED.

**Section 3.04 – Predevelopment Grant Agreement Terminated.** City and Grantee hereby agree that this Agreement supersedes and replaces the Predevelopment Grant Agreement, and that the Predevelopment Grant Agreement and all of Grantee's obligations thereunder are hereby terminated.

## **ARTICLE 4 IMPLEMENTATION OF WORK PROGRAM**

### **Section 4.01 – Implementation of Work Program; Cooperation with Monitoring**

A. Grantee shall use the Grant Funds distributed by City under this Agreement solely for the Work Program(s) identified in and attached hereto as Appendix A and in accordance with the associated Project Budget(s) also identified in and attached hereto as Appendix A. Grantee shall not use the Grant Funds for any other purpose. If the Term of this Agreement is longer than one (1) year, Grantee shall, in good faith and with diligence, cooperatively draft with MOHCD/OEWD a Work Program and Project Budget for each year of the Term (each, a Grant Year"). Grantee shall submit to MOHCD/OEWD a Work Program and Project Budget no later than fifteen (15) days prior to the commencement of each Grant Year. Each Work Program and Project Budget approved by MOHCD/OEWD in a successive Grant Year is hereby attached hereto as Appendix A and incorporated herein. Grantee acknowledges and understands that MOHCD/OEWD will not obtain certification from the Controller until each Work Plan and each Project Budget are approved by MOHCD/OEWD for each Grant Year, as applicable. In the event Grantee has more than one Work Program under this Agreement, Grantee shall: (i) submit a separate Project Budget for each such Work Program, and (ii) administer and maintain records for each Work Program and Project Budget separately. In no event shall there be any transfer of Grant Funds from one Work Program and Project Budget to another Work Program and Project Budget of a different Grant Year without the prior written approval of City. The provisions

and terms of this Agreement shall apply with respect to each Work Program and Project Budget, including any successive Work Program and Project Budget in each Grant Year, and each reference to the Work Program or Project Budget shall include the singular and/or the collective, as appropriate. In the event of a breach of this Agreement with respect to any one or more of the attached Work Programs, MOHCD/OEWD shall have the right to suspend or terminate this Agreement as to all of the Work Programs.

B. Grantee shall, in good faith and with diligence, (i) expeditiously administer and implement the Work Program on the terms and conditions set forth in this Agreement and in accordance with the Project Budget, and (ii) fully and faithfully perform all duties and tasks necessary to meet the goals set forth in the Work Program. Grantee shall not materially change the nature or scope of any Work Program or Project Budget 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 under the MOHCD/OEWD Program, including those set forth in MOHCD/OEWD's Operating Procedures Manual and/or Capital Implementation Manual (the "Procedures Manual") previously delivered to Grantee and incorporated herein by this reference, as the same may be updated or amended from time to time, related to evaluation, planning and monitoring of the Work Program and shall cooperate in good faith with City in any evaluation, planning or monitoring activities conducted or authorized by City.

C. Grantee shall, upon request or as appropriate, prepare and make public presentations or conduct public meetings or hearings relative to the accomplishments of the Work Program. Grantee agrees to promptly comply with any request by MOHCD/OEWD to conduct such presentations or meetings in response to MOHCD/OEWD or community concerns relating to the Work Program.

#### **Section 4.02 – Grantee's Personnel**

The Work Program shall be implemented only by competent personnel under the direction and supervision of Grantee.

#### **Section 4.03 – Publications and Work Product**

A. If, in connection with this Agreement or the implementation of the Work Program, Grantee or any subcontractor 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 subcontractors or other persons or entities implementing the Work Program to ensure that City obtains the rights set forth herein.

B. 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 Work Program as approved by City. City shall have the sole and final discretion to determine whether Grantee has met this burden.

C. Without limiting the obligations of Grantee set forth in Section 4.03(B) above, Grantee shall submit to City for City's prior written approval any Publication or any training material that Grantee prepares and pays for in whole or part with the Grant Funds under this Agreement and that is included as part of the Work Program, and Grantee shall not disseminate any such Publication or training material 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 Work Program, and Grantee shall promptly provide to City one copy of all such materials or forms within two (2) business days following City's request. City's approval of any material hereunder shall not be deemed an endorsement of, or agreement with, the contents of such material, and City shall have no liability or responsibility for any such contents. City reserves the right to disapprove any material covered by this section at any time, notwithstanding a prior approval by City of such material. Grantee shall not

charge for the use or distribution of any Publication or training material 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.

D. Grantee shall distribute any Publication, training material or other material funded in whole or part with the Grant Funds under this Agreement solely within San Francisco, unless Grantee demonstrates a public benefit to San Franciscans from a broader distribution and 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.

E. 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 on a basis prohibited under Section 18.01 below; undermines the purpose of the Work Program; discourages otherwise qualified potential employees or volunteers or any clients from participating in activities covered under the Work Program; 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 Work Program 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.

F. 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 Work Program, or causing such element of the Work Program to be performed, consistent with the terms and conditions of this Agreement.

G. Grantee acknowledges the importance of the public's understanding of MOHCD/OEWD efforts. Grantee agrees to identify and publicize newsworthy program accomplishments and activities, and to acknowledge the Funding Source if and when appropriate and possible. In addition, Grantee shall credit MOHCD/OEWD, and the Funding Source as applicable, in all Publications, press releases, brochures, and other material resulting from activities, events, projects or programs supported with the Grant Funds. If a CDBG project, this acknowledgment should identify the project as: "Funded by the Mayor's Office of Housing and Community Development/Office of Economic and Workforce Development through the Community Development Block Grant Program." If an ESG project, this acknowledgment should identify the project as: "Funded by the Mayor's Office of Housing and Community Development through the Emergency Solutions Grant Program." Except as set forth in this Section, Grantee shall not use the name of the MOHCD/OEWD or City (as a reference to the municipal grantee as opposed to location) in any Publication without prior written approval of City.

#### **Section 4.04 – Capital Programs**

A. For Work Programs that include construction or renovation activity, Grantee acknowledges that Grant Funds provided under this Agreement are to be used to perform capital improvements, and that such Grant Funds may not be used for subsequent repairs or improvements to the facility following completion of the Work Program. This may include seeking monies from other sources to establish a building repair/maintenance reserve fund to cover future improvements. No MOHCD/OEWD monies may be used to fund such reserves.

B. For all construction and rehabilitation projects for which permits are required by the San Francisco Building Code, Grantee will obtain the approval of the Mayor's Office on Disability ("MOD") prior to or concurrent with all such applications for Building Permits from the San Francisco Department of Building Inspections unless the project is exempted from MOD review. Projects exempted from MOD review and sign off are those projects that are defined as such in the Capital Implementation Manual published by MOHCD/OEWD.

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

#### **Section 5.01 – Maximum Amount of Grant Funds**

**Grant Amount:** The amount of the Grant Funds authorized for disbursement hereunder shall not exceed \$13,450,689, and incorporates the funding initially disbursed under the Predevelopment Grant Agreement, during



the Term of this Agreement authorized by City and certified as available by the Controller (collectively, the "Grant Amount"). In no event shall the amount of Grant Funds disbursed hereunder exceed \$13,450,689.

### **Section 5.02 – Use of Grant Funds**

Grantee hereby agrees that Grant Funds disbursed under this Agreement shall be used solely and strictly in accordance with the terms of this Agreement. Grantee shall expend the Grant Funds in accordance with the Project Budget, and shall obtain the prior approval of City before transferring expenditures from one line item to another within the Project Budget. Grantee acknowledges and agrees that the availability of Grant Funds allocated under this Agreement is expressly conditioned on Grantee's fulfilling all the provisions of the Work Program in accordance with the Project Budget.

### **Section 5.03 – Other Funding** – INTENTIONALLY OMITTED

### **Section 5.04 – Disbursement Procedures**

A. NO COST INCURRED BY GRANTEE PRIOR TO **FEBRUARY 9, 2018** WILL BE REIMBURSED, INCLUDING BUT NOT LIMITED TO ARCHITECT OR CONSULTANT FEES INCURRED IN DEVELOPING THE PROJECT BUDGET OR IMPROVEMENT PLANS FOR THE WORK PROGRAM. IN ADDITION, IF THE WORK PROGRAM IS STALLED OR SUSPENDED FOR ANY PERIOD OF TIME, CITY MAY, AT ITS OPTION, REFUSE TO MAKE ANY PAYMENTS HEREUNDER APPLICABLE TO SUCH PERIOD, INCLUDING PAYMENTS FOR SALARIES AND OTHER FIXED ITEMS OF EXPENSE.

B. Grantee must have delivered to the City an Expenditure Request in form and substance satisfactory to the City, together with: (i) copies of invoices, contracts or other documents covering all amounts requested, and (ii) a line item breakdown of costs to be covered by the Expenditure Request. The City may grant or withhold its approval of any line item contained in the Expenditure Request that, if funded, would cause it to exceed the budgeted line item as previously approved by the City. Additionally, the City must approve all requested reallocations of Funds for line items previously approved by the City.

C. No Event of Default, or event that with notice or the passage of time or both could constitute an Event of Default, may have occurred that remains uncured as of the date of the Expenditure Request.

D. With respect to any Expenditure Request that covers rehabilitation or construction costs, Grantee must have certified to the City that the Project complies with the labor standards set forth in **Attachment C**, if applicable.

E. Retention. In addition to the other conditions to Disbursements, Grantee acknowledges that the amount of hard costs or tenant improvements costs included in any Expenditure Request associated with rehabilitation or construction, when added to previously approved costs, may not exceed ninety percent (90%) of the approved budgeted costs on a line item basis. The City will retain the remaining ten percent (10%) of hard costs or tenant improvement costs associated with rehabilitation or construction (the "Retention"). Grantee may request disbursement of the aggregate amount of the Retention only upon satisfaction of all requirements listed in the Construction Manager's Checklist for Release of Retention included in the Contracting Manual and upon the satisfaction of each of the following conditions, unless otherwise approved in writing by the City: (a) completion of rehabilitation or construction of the Project in accordance with the plans and specifications approved by the City, as evidenced by a certificate of occupancy or equivalent certification provided by the City's Department of Building Inspection, and an architect's or engineer's certificate of completion; (b) timely recordation of a notice of completion; and (c) either expiration of the lien period and the absence of any unreleased mechanics' liens or stop notices or recordation of the lien releases of all contractors, subcontractors and suppliers who provided labor or materials for the Project. After fifty percent (50%) of the rehabilitation or construction of the Project is complete as determined by the City, and upon Grantee's written request, the City may elect to reduce the amount of Retention withheld to a level of no less than five percent (5%) of the hard costs or tenant improvements, provided that the following prerequisites have been met: (a) all work required to be performed by all parties for whom the City agrees to release the Retention (the "Early Retention Release Contractors") has been completed in conformance with the terms of the applicable contract documents, the plans and specifications approved by the City and all applicable Laws; (b) the applicable Early Retention Release Contractors have filed unconditional lien waivers

satisfactory to the City; (c) no liens or stop notices have been filed against the Project and no claims are pending; (d) the City determines that the contingency is in balance and adequate to complete the Project; and (e) the Project is on schedule.

F. Limitations on Approved Expenditures. The City may refuse to approve any expenditure: (a) during any period in which an event that, with notice or the passage of time or both, would constitute an Event of Default remains uncured, or during the pendency of an uncured Event of Default; or (b) for disapproved, unauthorized or improperly documented expenses. The City is not obligated to approve expenditure of the full Funding Amount unless approved Expenditure Requests support disbursement of the full Funding Amount, and in no event may the aggregate amount of all Funds disbursed to Grantee under this Agreement exceed the Funding Amount.

### **Section 5.05 – Demolition, Rehabilitation and Construction.**

- A. Selection Requirements. In the selection of all contractors and professional consultants for the Project, Grantee must comply with the City's procurement requirements and procedures as described in the Contracting Manual and with the requirements of the Small Business Enterprise Program ("SBE Program") as set forth in the SBE Manual according to the procedures established by the City's Contract Monitoring Division.
- B. Plans and Specifications. Before starting any demolition, rehabilitation or construction on the Site, Grantee must have delivered to the City, and the City must have reviewed and approved, plans and specifications and the construction contract for the Project entered into between Grantee and Grantee's general contractor and approved by the City (the "Construction Contract"). The plans approved by the City must also be approved by the City and County of San Francisco's Department of Building Inspection (the "Department of Building Inspection") (collectively, the "Approved Plans") prior to the start of any demolition, rehabilitation or construction on the Site. The Approved Plans must be explicitly identified in the Construction Contract. The specifications approved by the City, including the funder requirements and the technical specifications (the "Approved Specifications") must also be explicitly identified in the Construction Contract. The Construction Contract may include funder requirements not otherwise addressed in the Approved Specifications. The Contracting Manual provides further guidance to Grantee regarding the City's policies for the review and approval of plans, specifications and construction contracts. After completion of the Project, Grantee must retain the Approved Plans as well as "as-built" plans for the Project, the Approved Specifications and the Construction Contract, all of which Grantee must make available to the City upon request.
- C. Change Orders. Grantee may not approve or permit any change orders to the plans and specifications approved by the City without the City's prior written consent. Grantee acknowledges that the City's approval of any change order will not constitute an agreement to amend the Table of Sources and Uses or to provide additional Funds for the Project, unless the City agrees in its sole discretion to amend the Table of Sources and Uses or provide additional Funds for that purpose.
- D. Insurance, Bonds and Security. Before starting any demolition, rehabilitation or construction on the Site, Grantee must deliver to the City insurance endorsements and bonds as described in **Appendix D**. At all times, Grantee must take prudent measures to ensure the security of the Site.
- E. Notice to Proceed. No demolition, rehabilitation or construction may commence until Grantee has issued a written notice to proceed with the City's approval.
- F. Commencement and Completion of Project. Unless otherwise extended in writing by the City, Grantee must: (a) commence demolition, rehabilitation or construction by a date no later than \_\_\_\_\_; (b) complete demolition, rehabilitation or construction by a date no later than \_\_\_\_\_, in accordance with the plans and specifications approved by the City, as evidenced by a certificate of occupancy or equivalent certification provided by the City's Department of Building Inspection, and an architect's or engineer's certificate of completion (the "Completion Date").

- G. Rehabilitation/Construction Standards. All rehabilitation or construction must be performed in a first class manner, substantially in accordance with final plans and specifications approved by the City and in accordance with all applicable codes.
- H. The City and its employees and officers are not authorized to request Grantee to perform services or to provide materials, equipment and supplies that are beyond the scope of the Work Program unless this Agreement is amended in writing to authorize such additional services, materials, equipment or supplies. The City is not required to pay Grantee for services, materials, equipment or supplies that are provided by Grantee that are beyond the scope of the services, materials, equipment and supplies agreed upon herein and that were not approved by a written amendment to this Agreement having been lawfully executed by the City.
- I. The City and its employees and officers are not authorized to offer or promise to Grantee additional funding for this Agreement that 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. The City is not required to honor any offered or promised additional funding which exceeds the maximum provided in this Agreement that requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained.
- J. The City's sole obligation under this Agreement shall be to act in good faith to administer the MOHCD/OEWD Program and to make disbursements as it deems appropriate pursuant to the terms of this Agreement. The City shall not, under any circumstances, be liable for any delay in disbursement or for any delay or failure to approve or disburse funds.
- K. In the event of any dispute between Grantee and any contractor, lessor or other third party relating to the Work Program, Grantee shall immediately inform the City of the dispute and all information relative to the dispute. The City shall have no responsibility for resolving disputes between Grantee and its contractor or lessor pertaining to the Work Program, nor shall the City be obligated to make any disbursements during the period that the City determines such a dispute exists. In the event any such dispute is not resolved within ninety (90) days, the City may, at its option, immediately suspend or terminate this Agreement and the City shall not be obligated to disburse any funds with respect to the disputed work; provided, however, Grantee shall not be obligated to return any funds which have been disbursed by the City and properly applied by Grantee for permitted expenses under this Agreement.
- L. Any and all disbursement must be made in strict accordance with the Project Budget. Grantee agrees to refund to the City any payments that MOHCD/OEWD determines were not properly due to Grantee under this Agreement, immediately upon receipt of notice from MOHCD/OEWD of such determination. Any amendment to the Project Budget must be made in accordance with Section 19.02.
- M. 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 expense, payment or reimbursement of which is later disallowed by the state or federal government, Grantee shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset all or any portion of the disallowed amount against any other payment due to Grantee hereunder or under any other Agreement. Any such offset with respect to a portion of the disallowed amount shall not release Grantee from Grantee's obligation hereunder to refund the remainder of the disallowed amount.

## **ARTICLE 6**

### **RESTRICTIONS ON THE USE OF THE FUNDS**

#### **Section 6.01 – Restrictions on Disbursements**

Grantee shall use the Grant Amount only for costs specifically included in the Work Program or Project Budget, or otherwise approved by MOHCD/OEWD in writing. Without limiting the foregoing, under no circumstances shall the Grant Amount be used for any of the following:

- A. Costs that violate the terms of this Agreement or exceed the total Project Budget in Appendix A.

B. Costs incurred after MOHCD/OEWD has requested Grantee to withhold further disbursements and/or to furnish additional data, until Grantee is thereafter advised by MOHCD/OEWD in writing that City has no objection to Grantee so proceeding.

C. Payments to any contractor, consultant, lessor or other third party without benefit of a written contract previously approved in writing by MOHCD/OEWD pursuant to Section 7.03, or not in compliance with MOHCD/OEWD requirements relating to consultant and fiscal matters.

D. Costs incurred by Grantee prior to commencement of the term of this Agreement or following the expiration or earlier termination of this Agreement, regardless of the type of costs.

E. Costs relating to the acquisition, construction, reconstruction, rehabilitation, repair, maintenance or operation of religious structures used for religious purposes.

F. Political activities, as more particularly set forth in Section 18.10 below.

### **Section 6.02 – Contract Close Out**

Grantee acknowledges and agrees that the Grant Amount shall be used only to reimburse Grantee for eligible costs incurred by Grantee during the term and that, upon expiration of the term, or upon earlier termination of this Agreement, Grantee shall have no interest in any portion of the Grant Amount that is not required to reimburse Grantee for eligible costs incurred during the term.

## **ARTICLE 7 ASSIGNMENT AND CONTRACTING**

### **Section 7.01 – 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.

### **Section 7.02 – Agreement Made in Violation of this Article**

Any agreement made in violation of Section 7.01 shall confer no rights on any person or entity and shall automatically be null and void.

### **Section 7.03 – Subcontracting**

A. Grantee, when necessary to complete the Work Program, may subcontract parts of the Work Program to contractors acceptable to MOHCD/OEWD, subject to the provisions of this Section.

B. Prior to entering into any contract for contractor or consultant services for Three Thousand Dollars (\$3,000.00) or more, Grantee must submit the proposed contract to MOHCD/OEWD for approval, together with information concerning the qualifications and licensing of the proposed contractor or consultant and any additional information requested by MOHCD/OEWD. All proposed contracts must detail the responsibilities, standards and compensation of the contractor or consultant. Reasons for disapproval of such contract may include, but are not limited to, a scope of work or budget that does not reflect the Project Budget or Work Program, or insufficient qualifications of the contractor or consultant.

B. No funds will be disbursed by City for the services of a contractor or consultant unless pursuant to a written contract. All contracts for \$3,000.00 or more must be approved in writing by MOHCD/OEWD in advance, and shall be made in conformance with the requirements and procedures set forth in MOHCD/OEWD Form H: Request for Approval of Subcontract and Equipment Purchases ("Form H"). Without limiting the foregoing, all contracts and subcontracts entered into by Grantee must include the applicable provisions of this Agreement relative to the Funding Source.

C. In the event that Grantee contracts parts of the Work Program to contractors acceptable to MOHCD/OEWD, 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 contractor or its agents or employees as fully as if they were the acts, defaults or omissions of Grantee. Grantee shall ensure that its contractors comply with all of the terms of this Agreement, insofar as they apply to the contracted portion of the Work Program. All references herein to duties and obligations of Grantee shall be deemed to pertain also to all contractors to the extent applicable. A default by any contractor shall be deemed to be an Event of Default hereunder. Nothing contained in this Agreement shall create any contractual relationship between any contractor and City.

#### **Section 7.04 – 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 8 ACQUISITION OF REAL AND PERSONAL PROPERTY**

#### **Section 8.01 – Purchase Procedures**

A. Any purchase of property or services under this Agreement must be consistent with applicable federal, state and local laws.

#### **Section 8.02 – Equipment and Supplies**

No Grant Funds under this Agreement will be disbursed by City for the purchase of equipment or supplies in an amount of \$3,000.00 or more, unless pursuant to a written contract previously approved by MOHCD/OEWD in writing and made in conformance with the purchase procedures set forth in Form H. Grantee shall not circumvent this requirement for written consent by dividing an order or payment into two or more parts.

#### **Section 8.03 – Acquisition and Disposition of Nonexpendable Property**

A. Title to all nonexpendable property (nonexpendable property is property other than real property that costs more than \$500.00 and has a useful life which exceeds one year) acquired by Grantee in whole or in part with funds provided under this Agreement, shall vest immediately in City for the purpose of securing Grantee's performance under this Agreement, unless City notifies Grantee to the contrary. Grantee shall take any and all steps necessary to take title to such property in City's name. Grantee shall have the right to possession of such property, and shall be solely responsible for the use and maintenance of such property and for any liability associated with the property that arises or relates to any act or omission occurring at any point prior to Grantee's delivery of the property to City. Grantee may not alienate, transfer or encumber such property without City's prior written consent. At the end of the term or upon earlier expiration of this Agreement, possession of said property should be immediately surrendered to City.

B. Following the term or earlier expiration of this Agreement, City may release the nonexpendable property to Grantee, reallocate it to Grantee under subsequent Agreements, or allocate it to other beneficial public agencies or private nonprofit grantees.

C. Any interest of Grantee or any subcontractor in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, the contents of computer files or media, or other documents or Publications prepared by Grantee or any subcontractor in connection with this Agreement, the implementation of the Work Program, the services to be performed under this Agreement, or acquired through the use of any Grant Funds ("Work Product"), is hereby pledged to City as security for Grantee's obligations and performance under this Agreement, and upon an Event of Default, shall become the property of and be promptly transmitted by Grantee to City. Upon the written request of City, Grantee shall transmit or deliver to City any Work Product at the end of the term or upon earlier expiration of this Agreement.

#### **Section 8.04 – Acquisition and Disposition of Real Property**

The following conditions apply to any acquisition of an interest in real property (the “Acquired Property”) in whole or in part with the Grant Amount:

- (a) Grantee must obtain prior written approval from MOHCD/OEWD for any such acquisition.
- (b) Grantee shall be solely responsible for the condition, use and operation of the Acquired Property and for any liability with respect thereto. During the Tenure Period, Grantee will maintain the Acquired Property in good condition and repair and use it to provide services as specified in the Work Program.
- (c) If the Grant Amount is used in whole or in part for such acquisition, Grantee must execute and record a deed of trust naming City as beneficiary, which such deed of trust must expressly provide that it is executed to secure performance of this Agreement during the Tenure Period. The deed of trust shall be in a form and content approved by MOHCD/OEWD, and shall be recorded as a lien on Grantee's interest in the Acquired Property pursuant to procedures established by MOHCD/OEWD. In the event of a default, City would have all rights and remedies available by law or in equity, including but not limited to the right to foreclose upon the deed of trust. At the discretion of MOHCD/OEWD, Grantee must also execute and record a declaration of restrictions in form and content approved by MOHCD/OEWD that requires Grantee and the Acquired Property to comply with the use restrictions in this Agreement for the Tenure Period.
- (d) No portion of Grantee's interest in the Acquired Property or the improvements constructed thereon may be transferred prior to expiration of the Tenure Period without the prior written approval of MOHCD/OEWD. "Transfer" includes any transfer or encumbrance of any of Grantee's interest in such property, and any transfer or encumbrance of any ownership interest in Grantee. If necessary, Grantee must also obtain prior written approval from the Funding Source of such transfer.
- (e) Six (6) months following the date of acquisition and annually thereafter during the Tenure Period, Grantee shall file with MOHCD/OEWD written reports on the operation and maintenance of the Acquired Property and shall furnish, upon request, such other pertinent data evidencing continuous use of the Acquired Property for the purposes specified in this Agreement.

If the real property ceases to be used to meet one of the purposes under subsection (i) above, Grantee shall immediately pay to MOHCD/OEWD the higher of: (i) the fair market value of the real property, less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property; or (ii) the Grant Amount.

In cases where the real property continues to meet one of the purposes under subsection (i) above but the proposed new use is determined by MOHCD/OEWD to not be consistent with the City priority initially agreed to be met by the Grantee, then Grantee shall immediately pay to MOHCD/OEWD the higher of: (i) the fair market value of the real property, less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property; or (ii) the Grant Amount.

(f) **(Subsection for all other funding sources)** During the Tenure Period, prior to Grantee quitting, vacating, transferring, selling, or surrendering the real property, or electing or becoming unable to continue the use of said property as specified in the Work Program, Grantee must notify MOHCD/OEWD. MOHCD/OEWD will determine whether a proposed new use meets the City priority, which the Grantee initially agreed to as a condition for receiving such City funding. If the real property's new use does not meet a City priority then Grantee shall immediately pay to MOHCD the Grant Amount.

#### **Section 8.05 – Property Improved, Renovated or Rehabilitated with the Funds – Intentionally omitted.**

**ARTICLE 9**  
**REPORTING REQUIREMENTS; AUDITS;**  
**PENALTIES FOR FALSE CLAIMS**

**Section 9.01 – Monitoring and Reporting**

A. Grantee agrees that MOHCD/OEWD may monitor the progress of the activities performed by Grantee pursuant to this Agreement, and Grantee agrees to comply with any requirements imposed by MOHCD/OEWD to meet performance standards required herein.

B. The goal of MOHCD/OEWD's monitoring shall be to determine the following: actual versus planned achievement of Work Program objectives; Work Program performance, effectiveness, efficiency and workload; ethnic and income composition of Work Program beneficiaries and staff; financial accountability and management; and population characteristics of neighborhood service areas. Monitoring by the City under this Agreement may include, but shall not be limited to: (i) on-site inspections by the City staff or the City's agents; (ii) quarterly performance reviews; (iii) interviews with Grantee's staff members and/or clients of Grantee in the performance of the Work Program; (iv) attendance at events, activities or meetings; and (v) a semi-annual evaluation report. Grantee agrees to comply with all of the City's monitoring requests, and to gather information regarding the work funded hereunder as and when requested by the City. Failure to comply with the City's monitoring requests shall be deemed a material breach of this Agreement, and shall entitle the City to exercise any and all rights and remedies available hereunder, including but not limited to the right to terminate this Agreement.

C. Grantee shall submit reports to MOHCD/OEWD as set forth in the Procedures Manual, with a minimum frequency of once a quarter. Reports must summarize the progress of grant implementation activities undertaken as part of this Agreement and the identifiable results of such activities in accordance with Chapter 5 of the Procedures Manual and in accordance with such other requirements as may be specified by MOHCD/OEWD from time to time and applicable Funding Source regulations. Reports shall also include data and records on the race, sex, and ethnicity of persons receiving employment through activities assisted under this Agreement.

**Section 9.02 – 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 11.01.

**Section 9.03 – 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 11 to be false or misleading at any time during the term of this Agreement.

**Section 9.05 – Books and Records**

A. During the term, and for a period of five (5) years after expiration of the term, Grantee shall create and maintain records that include the following information: (i) the specific uses of the Grant Amount and of any other monies used to fund the performance of the Work Program, including records demonstrating that each activity is eligible for reimbursement hereunder; (ii) copies of all invoices, canceled checks, payroll records, attendance records, and any other documentation for costs which have been reimbursed by the Grant Amount, including withholding, social security payments, and other employee/contractor-related payments; (iii) documentation relating to Grantee's tax-exempt status; (iv) Grantee's tax returns and financial statements applicable the term; and (v) financial information as required by the Funding Source, including 24 C.F.R. Part 570.502 for CDBG grants, 24 C.F.R. Part 576.500 for ESG grants and 24 C.F.R. Part 574.530 for HOPWA grants. All records shall be maintained in a manner that, in MOHCD/OEWD's reasonable judgment, will provide an effective system of internal control and will permit timely and effective audits as required by this Agreement. For federal Funding Sources, all records shall be maintained in accordance with OMB Uniform Guidance requirements in C.F.R. Title 2, Subtitle A, Chapter II, Part 200, and in a manner which, MOHCD/OEWD's reasonable judgment, will provide an effective system of internal control and will permit timely and effective audits as required by this Agreement. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that

have started before the expiration of the five-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five-year period, whichever is later.

#### **Section 9.06 – Inspection and Audit**

Grantee shall make available to City, its employees and authorized representatives, during regular business hours all of the files, records, books, invoices, documents, payrolls and other data required to be established and maintained by Grantee under Section 9.05. 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 9.

#### **Section 9.07 – Submitting False Claims; Monetary Penalties**

Grantee acknowledges and agrees that it is a "contractor" under and is subject to San Francisco Administrative Code Section 21.35. Under such Section 21.35, any contractor, subgrantee or consultant who submits a false claim shall be liable to City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at

<http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. A contractor, subgrantee or consultant will be deemed to have submitted a false claim to City if the contractor, subgrantee or consultant: (a) knowingly presents or causes to be presented to an officer or employee of 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 City; (c) conspires to defraud City by getting a false claim allowed or paid by 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 City; or (e) is a beneficiary of an inadvertent submission of a false claim to City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to City within a reasonable time after discovery of the false claim.

### **ARTICLE 10 TAXES**

#### **Section 10.01 – 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 Work Program, the Grant Funds or any of the activities contemplated by this Agreement.

#### **Section 10.02 – 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.



## **ARTICLE 11 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:

### **Section 11.01 – Organization Authorization**

Grantee is a limited liability company, whose sole member 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's sole member 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.

### **Section 11.02 - Location**

Grantee's operations, offices and headquarters are located at the address for notices set forth Section 17.01. All aspects of the Work Program will be implemented at the geographic location(s), if any, specified in the Work Program.

### **Section 11.03 – No Misstatements**

No document furnished or to be furnished by Grantee to City in connection with 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.

### **Section 11.04 – Conflict of Interest**

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

1. Incorporation of the California Political Reform Act – No officer or employee of the City and County shall make, participate in making, or seek to influence a decision of the City and County in which the officer or employee has a financial interest within the meaning of California Government Code Section 87100 et seq. and any subsequent amendments to these Sections.

2. Incorporation of California Government Code 1090, et seq. – No officer or employee of the City and County shall make a contract in which he or she has a financial interest within the meaning of California Government Code Section 1090 et seq. and any subsequent amendments to these Sections.

3. Future Employment – No officer or employee of the City shall make, participate in making, or otherwise seek to influence a governmental decision, affecting a person or entity with whom the officer or employee is discussing or negotiating an agreement concerning future employment.

B. Not more than one member of an immediate family serves or will serve as an officer, director or employee of Grantee, without prior written consent of City. For purposes of this subsection, "immediate family" shall include husband, wife, domestic partner, brothers, sisters, children and parents (both legal parents and stepparents). If Grantee has any doubt as to its compliance with this requirement, it shall submit a written request to MOHCD/OEWD for clarification and advice as to the proper course of action to be taken. Where noncompliance is found, MOHCD/OEWD shall have the right, upon discovering such noncompliance, to order Grantee to dismiss one or as many of its employees as are required to restore compliance with this requirement.

**Section 11.05 – Grantee’s Board of Directors – Intentionally omitted.**

**Section 11.06 – No Other Agreements with City**

Grantee is not a party to and has no interest in any other agreement with the City, including any commission, department or other subdivision thereof, except as listed in Appendix B.

**Section 11.07 – Subcontracts**

Except as may be permitted hereunder and approved by MOHCD/OEWD, 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 Work Program.

**Section 11.08 – 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 12  
INDEMNIFICATION AND GENERAL LIABILITY**

**Section 12.01 – Indemnification**

Except as otherwise provided in any other agreements between the City and Grantee with respect to the Work Program, 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 10; 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.

As a material part of the consideration for this Agreement, Grantee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, the City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any present or future laws, statutes, or regulations, arising out of any acts, omissions, or matters relating to this Agreement, including but not limited to any exercise of the City of its right to suspend or terminate this Agreement. In connection with the foregoing release, Grantee acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

**A general release does not extend to claims, which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

Grantee acknowledges that the release contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Grantee realizes and acknowledges that it has entered into this Agreement in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases and indemnifications contained herein shall survive any termination of this Agreement.

### **Section 12.02 – Duty to Defend; Notice of Loss**

Grantee acknowledges and agrees that its obligation to defend the Indemnified Parties under Section 12.01: (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 12.01, 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 12.01 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 12.01, 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.

### **Section 12.03 – Incidental and Consequential Damages**

Losses covered under this Article 12 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.

### **Section 12.04 – Limitation on Liability of City**

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

## **ARTICLE 13 INSURANCE AND BONDING See Exhibit D.**

## **ARTICLE 14 EVENTS OF DEFAULT AND REMEDIES**

### **Section 14.01 – 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 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 13.
- (c) **Failure to Comply with Applicable Laws** – Grantee fails to perform or breaches any of the terms or provisions of Article 18.
- (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), including but not limited to a HOPWA Loan.

(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 Comply with Reporting Requirements** – Grantee fails to comply with the reporting requirements required herein or the submission to the City of reports which are incorrect, incomplete and/or misleading in any material respect, or fails to keep accurate records as required under this Agreement, as determined by MOHCD/OEWD in its sole discretion.

(i) **Failure to Implement and Maintain Fiscal Control Requirements** – Grantee shall take all necessary steps to ensure proper fiscal control over the Grant Funds and to ensure that the Grant Funds are properly used in furtherance of the Work Program and for no other purposes. MOHCD/OEWD shall have the right to review and suggest improvements to Grantee's fiscal control mechanisms or procedures, and Grantee's inability to provide proper fiscal control or Grantee's refusal or inability to accept and implement additional fiscal controls mandated by MOHCD/OEWD, the City, or the Funding Source shall be a material breach of this Agreement. MOHCD/OEWD may suspend or terminate payments to Grantee hereunder pursuant to this Article 14 upon MOHCD/OEWD's determination of mismanagement by Grantee.

(j) **Impracticality or Unfeasibility of Carrying out the Agreement** – Grantee does not demonstrate capacity to implement this Agreement.

(k) **Failure to Accept Additional Conditions** – Grantee is unable or unwilling to accept any additional conditions that may be provided by law, by executive order, by regulations, or by any policy announced by the Funding Source or MOHCD/OEWD at any time.

(l) **Failure to Fulfill Work Program Goals** – Grantee fails to fulfill the goals and requirements set forth in the Work Program, or to cooperate with MOHCD/OEWD's monitoring requirements, or to use the Grant Funds as required under this Agreement, or any other unsatisfactory performance of this Agreement as determined by MOHCD/OEWD in its sole discretion.

(m) **Failure to Maintain Licenses or Governmental Approvals** – Grantee loses or fails to maintain any license(s) or governmental approval(s) required for the lawful operation or performance of all or part of the activities funded by this Agreement.

(n) **Suspension or Debarment by Governmental Agency** – Grantee is suspended, disciplined or debarred by the U.S. General Services Administration or any other governmental agency.

(o) **Conflict of Interest** – Grantee breaches or violates the conflict of interest provisions set forth herein.

Grantee shall notify MOHCD/OEWD immediately upon the occurrence of any activity, notice or event that falls within the items listed above, with the reasons therefore together with any relevant facts or information requested by MOHCD/OEWD.

#### **Section 14.02 – 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) **Suspension and Probation** – City may immediately suspend this Agreement or put this Agreement on probation at any time for any of the above reasons, with or without notice to Grantee and without any liability therefore. In the event the City puts this Agreement on probation, the City shall continue to make disbursements under this Agreement for a period of up to six (6) months for Grantee to rectify performance deficiencies or violations to the satisfaction of the City. Following and/or during this probation, the City may elect to suspend or terminate this Agreement as provided below. In the event the City suspends this Agreement, the City shall not be obligated to make any further disbursements under this Agreement unless and until the City decides to reinstate this Agreement and any prior violation has been remedied to the satisfaction of the City. 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. Following such suspension, the City may elect to terminate this Agreement as provided below.
- (b) **Termination** – City may terminate this Agreement by notifying Grantee in writing of the City's intent to terminate the Agreement, specify the reasons(s), and furnish a description of corrective actions (if any) to be taken by Grantee. Grantee shall have five (5) working days in which to respond to such a letter of intent. If Grantee does not reply to the letter of intent or effectuate the requested corrective measures to the satisfaction of the City within such five- (5) working day period, the City may terminate the Agreement, in its sole discretion and without liability therefore, by giving written notice to Grantee of such termination. Any termination shall be effective as of the date of such notice. Grantee will be paid for eligible expenses that was submitted and approved by City prior to the date of termination specified in such notice. The City need not give such letter of intent if the termination is for a performance problem or other matter not reasonably susceptible to a cure within such five (5) day period. Upon termination of this Agreement, Grantee shall, without limiting any of the City's rights or remedies, immediately refund to the City all unexpended and improperly expended funds disbursed to Grantee under this Agreement, and any assets and any interests of any type and in any form acquired, leased, or rehabilitated with MOHCD/OEWD monies. Grantee shall execute any documents or instruments reasonably requested by the City to effectuate such transfer.
- (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, and any Work Product.
- (e) **Refuse to Consider Future Grantee Applications** – City may refuse to consider any future application for grants or agreements from Grantee or its affiliates upon the occurrence of any of the above events until such time as the breach or problem has been remedied or satisfied to the City's satisfaction, in its sole discretion.

#### **Section 14.03 – 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 15**  
**DISCLOSURE OF INFORMATION AND DOCUMENTS**

**Section 15.01 – Proprietary or Confidential Information of City**

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

**Section 15.02 – Public Disclosure**

A. Grantee acknowledges and agrees that under the City’s Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (California Government Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. Contracts, 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 contracts, shall be open to inspection immediately after a contract 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 contract or other benefit until and unless that person or organization is awarded the contract 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.

B. Pursuant to San Francisco Administrative Code Section 67.32, Grantee has on or before the date hereof provided to the City financial projections, including profit and loss figures, for the Work Program. For the term of the Agreement, Grantee shall within 30 days after the end of Grantee’s fiscal year provide to the City annual financial statements for the Work Program certified by Grantee as complete and accurate and audited by an independent accounting firm. Grantee acknowledges and agrees that the financial projections and audited financial statements shall be public records subject to disclosure upon request.

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

D. In accordance with the Citizen’s Right to Know Act of 1998 (Chapter 79 of the San Francisco Administrative Code), no officer, department, board or commission of the City shall approve a City Work Program, as defined in Chapter 79, unless a sign has been posted on the applicable property at least fifteen (15) days prior to such approval. A City Work Program is a project that involves new construction, a change in use or a significant expansion of an existing use where the City Funding for such project is \$50,000 or more. If the Grant Amount will be used for a City Work Program, this Agreement will not become effective until fifteen (15) days following the posting of the requisite sign (the “Sign Date”) under Chapter 79, and the City shall have the right to nullify or revoke this Agreement, without cost or liability of any sort whatsoever, at any time prior to the Sign Date. If Grantee believes that this Agreement relates to a City Work Program and that the requisite sign has not been posted, Grantee shall notify the City so that the City may determine the applicability of Chapter 79, and, if necessary, post the requisite sign.

## **ARTICLE 16 INDEPENDENT CONTRACTOR STATUS**

### **Section 16.01 – Nature of Agreement**

Grantee shall be deemed at all times to be an independent contractor and is solely responsible for the manner in which Grantee implements the Work Program 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. Grantee is not a state or governmental actor with respect to any activity conducted by Grantee hereunder. This Agreement does not constitute authorization or approval by the City of any activity conducted by Grantee.

Nothing contained in this Agreement shall create or justify any claim against the City or Grantee by any third person with whom Grantee may have contracted or may contract relative to the furnishing or performance of any work, materials, equipment or services relating to the Work Program or with respect to any other projects being undertaken by Grantee or the City. The provisions of this Agreement are not intended to benefit any third party, and no third party may rely hereon.

### **Section 16.02 – Direction**

Any terms in this Agreement referring to direction or instruction from MOHCD/OEWD 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.

### **Section 16.03 – 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 16.03 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 determines 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 17 NOTICES AND OTHER COMMUNICATIONS**

### **Section 17.01 – 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 MOHCD/OEWD or City:**  
Mayor's Office of Housing and  
Community Development  
1 South Van Ness Avenue, 5<sup>th</sup> Floor  
San Francisco, CA 94103  
Attn: Director  
Facsimile No. 415-701-5501

Or

Office of Economic and Workforce Development  
City Hall, Room 448  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Attn: Director

**If to Grantee:**  
1064 Mission Homeless Services Center LLC  
Care Of Mercy Housing Calwest  
1256 Market Street  
San Francisco, CA 94102  
Attn: Executive Director

### **17.02 – Effective Date**

All communications sent in accordance with Section 17.01 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.

### **Section 17.03 – Change of Address**

From time to time any party hereto may designate a new address for purposes of this Article 17 by notice to the other party.

## **ARTICLE 18 COMPLIANCE**

### **Section 18.01 – Nondiscrimination and Equal Benefits**

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 subcontractors to comply with such provisions. Grantee's failure to comply with any of 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 work is being performed for City elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

D. **Condition to Contract** – As a condition to this Agreement, Grantee shall execute the "S.F. Administrative Code Chapters 12B & 12C Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the Contract Monitoring Division.



E. **Incorporation of Administrative Code Provisions by Reference** – The provisions of Chapters 12B, and 12C of the San Francisco Administrative Code relating to nondiscrimination by parties contracting with the City and County of San Francisco, 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 Section 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. Grantee's failure to comply with any of the obligations in this paragraph shall constitute a material breach of this Agreement.

#### **Section 18.02 – 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 grantees 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.

#### **Section 18.03 – Tropical Hardwood and Virgin Redwood Ban**

Pursuant to Section 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.

#### **Section 18.04 – 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.

#### **Section 18.05 – 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.

#### **Section 18.06 – Compliance with ADA**

Grantee acknowledges that, pursuant to the Americans With Disabilities Act (ADA) (42 U.S.C. Sections 12101 et seq.) and any other applicable federal, state or local laws (including Section 504 of the Rehabilitation Act of 1973), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Grantee shall not discriminate against any person protected under the ADA in connection with all or any portion of the Work Program and shall comply, and shall require its contractors and consultants to comply, with the provisions of the ADA and any and all other applicable federal, state and local disability rights legislation.

#### **Section 18.07 – Requiring Minimum Compensation for Employees**

A. Grantee agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of

Chapter 12 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 <http://www.sfgov.org/olse/mco>. A partial listing of some of Grantee's obligations under the MCO is set forth in this Section. Grantee is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

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

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

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

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

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

G. Grantee understands and agrees that if it fails to comply with the requirements of the MCO, City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within thirty (30) days after receiving written notice of a breach of this Agreement for violating the MCO, Grantee fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Grantee fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, 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 City.

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

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

#### **Section 18.08 – Notification of Limitations on Contributions**

Through execution of this Agreement, Grantee acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with 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, or from the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (1) the City elective officer, (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 contract until the later of either the termination of negotiations for

such contract or six months after the date the contract is approved. Grantee acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Grantee further acknowledges that the prohibition on contributions applies to each Grantee; each member of Grantee's board of directors; Grantee's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Grantee; any subgrantee listed in the bid or contract; and any committee that is sponsored or controlled by Grantee. Additionally, Grantee acknowledges that Grantee must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Grantee further agrees to provide to City the names of each person, entity or committee described above.

### **Section 18.09 – First Source Hiring Program**

If the Grant is (i) for public services, economic development, microenterprise assistance, or planning and the Grant Amount is Fifty Thousand Dollars (\$50,000) or greater, or (ii) for capital projects or construction funding and the Grant Amount is Three Hundred Fifty Thousand Dollars (\$350,000) or greater, then Grantee shall comply with the hiring requirements imposed by City's First Source Hiring Ordinance (San Francisco Administrative Code Chapter 83), which are incorporated herein by this reference. Upon request by MOHCD/OEWD, Grantee agrees to separately execute the attached First Source Hiring Agreement, although the lack of such a separate execution shall not affect the requirements of the agreement as incorporated herein.

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

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

1. Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs may be certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.
2. Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.
3. Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need

projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

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

5. Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts 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 contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

6. Set the term of the requirements.

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

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

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

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

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

E. Liquidated Damages. Grantee agrees:

1. To be liable to the City for liquidated damages as provided in this Section;

2. To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this Section;

3. That the Grantee's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the 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 this Chapter, 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 contract or at law; and

7. That in the event the City is the prevailing party in a civil action to recover liquidated damages for breach of a contract provision required by this Chapter, the contractor will be liable for the City's costs and reasonable attorneys fees.

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 Grantee 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.

G. To the extent they overlap, Grantee may comply with the requirements of this Section 18.09 by complying with the Section 3 requirements set forth in Section 18.19 (C) below.

#### **Section 18.10 – Prohibition on Political Activity with City Funds**

In accordance with San Francisco Administrative Code Chapter 12.G, no funds appropriated by City 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 City or its designee in order to ensure compliance with this Section. In the event Grantee violates the provisions of this Section, City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement and any other agreements between Grantee and City, (ii) prohibit Grantee from bidding on or receiving any new City contract for a period of two (2) years, and (iii) obtain reimbursement of all funds previously disbursed to Grantee under this Agreement.

#### **Section 18.11 – 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.

#### **Section 18.12 – Supervision of Minors**

A. 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.

B. 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).

C. 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.

D. Grantee shall expressly require any of its subgrantees with supervisory or disciplinary power over a minor to comply with this Section of the Agreement as a condition of its contract with the subgrantee.

E. 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.

#### **Section 18.13 – Protection of Private Information**

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

#### **Section 18.14 – San Francisco Bottle Water Ordinance**

Grantee agrees to comply with all applicable provisions of Environment Code Chapter 24 (the “Bottled Water Ordinance”). Accordingly, the sale or distribution of drinking water in plastic bottles of twenty-one (21) fluid ounces or less is prohibited at any gathering of more than 100 attendees that is funded in whole or part under this Agreement. If Grantee does not believe that the hydration needs of attendees can be satisfied through existing on-site potable water connections, then Grantee may request a waiver of the Bottled Water Ordinance. In addition to any remedies set forth in this Agreement, the Director of the City’s Department of the Environment may impose administrative fines as set forth in San Francisco Environment Code Chapter 24 for any violation of the Bottled Water Ordinance.

#### **Section 18.15 – Food Service Waste Reduction Requirements**

Grantee agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and

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

#### **Section 18.16 – Slavery Era Disclosure**

If Grantee is providing (i) insurance or insurance services, (ii) financial services, or (iii) textiles, as part of its Work Program, then Grantee shall comply with the following requirements, unless Grantee falls within an exception (see Administrative Code Section 12Y.3):

(a) Grantee acknowledges that this Agreement shall not be binding upon City until the Director receives the affidavit required by the San Francisco Administrative Code's Chapter 12Y, "San Francisco Slavery Era Disclosure Ordinance."

(b) In the event the Director finds that Grantee has failed to file an affidavit as required by Section 12Y.4(a) and this Agreement, or has willfully filed a false affidavit, Grantee shall be liable for liquidated damages in an amount equal to Grantee's net profit on the Agreement, 10 percent of the total amount of the Agreement, or \$1,000, whichever is greatest as determined by the Director. Grantee acknowledges and agrees that the liquidated damages assessed shall be payable to City upon demand and may be set off against any monies due to the Grantee from any agreement with the City.

(c) Grantee shall maintain records necessary for monitoring their compliance with this provision.

#### **Section 18.17 – Card Check Agreements**

The City and County of San Francisco has enacted an Ordinance at Chapter 23, Article V of its Administrative Code, commencing at Section 23.50 (the "Card Check Ordinance"), which applies to Grantee if the Work Program relates to or involves a Hotel or Restaurant Work Program and Grantee employs, or intends to employ, fifty (50) or more full or part-time employees. The terms of the Card Check Ordinance are expressly incorporated herein by this reference. To the extent Grantee, or its successors or assigns, employs individuals in a hotel or restaurant within the scope of the Card Check Ordinance, Grantee agrees, as a material condition of this Agreement, to enter into and abide by a Card Check Agreement with a Labor Organization or Organizations seeking to represent Grantee's employees, if and as required by the Card Check Ordinance, and to otherwise fully comply with the requirements of the Card Check Ordinance. Grantee recognizes that, if applicable, it must enter into a Card Check Agreement with a Labor Organization(s) as specified before executing this Agreement, and that being a party to such a Card Check Agreement is a condition precedent to the effectiveness of this Agreement.

#### **Section 18.18 – Religious Activities**

Grantee agrees that the Grant Amount will not be utilized for religious activities, such as worship, religious instruction or proselytization, or to promote religious interests. Grantee shall comply with applicable federal regulations, including those set forth in 24 C.F.R. 570.200(j). Grantee shall not, in performing the Work Program, discriminate against a person or entity on the basis of religion or religious belief.

#### **Section 18.19 – Additional Federal Requirements (Section for CDBG, ESG and HOPWA Grants only)**

A. Grantee agrees to abide by (i) 24 C.F.R. Part 84 and Part 570; and (ii) OMB Uniform Guidance requirements in C.F.R. Title 2, Subtitle A, Chapter II, Part 200,; as the same may be modified, supplanted or supplemented from time to time. Grantee acknowledges that it has reviewed each of the above documents, and will be responsible for ensuring its own compliance with the terms and conditions of these documents. MOHCD/OEWD will make available to Grantee additional copies of each of these documents at MOHCD/OEWD's offices.

B. Grantee agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act (which does not apply to ESG and HOPWA grants), the Safety Standards Act, the Copeland

“Anti-Kickback” Act (40 U.S.C. Sections 276, 327-333) and all other federal, state and local laws and regulations pertaining to labor standards insofar as they apply to the performance of this Agreement.

C. If applicable under Title 24 of the Code of Federal Regulations (“C.F.R.”) Part 135, Grantee agrees as follows:

1. To comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (“Section 3”). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low and moderate income persons, particularly persons who are recipients of HUD assistance for housing.
2. To comply with HUD's regulations 24 C.F.R. Part 135 (the “Part 135 Regulations”), which implement Section 3. As evidenced by their execution of this Agreement, the parties hereto certify that they are under no contractual obligation and they have no other impediment that would prevent them for complying with the Part 135 Regulations.
3. To send to each labor organization or representative of workers with which Grantee has a collective bargaining agreement or other similar understanding, if any, a notice advising the labor organization of workers representative of Grantee's commitments under Section 3, and will post copies of the notice in conspicuous places at all work sites where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, the availability of apprenticeship and training positions and the qualifications for each, the name and location of the person(s) taking applications for each of the positions, and the anticipated date the work shall begin.
4. To include a Section 3 clause similar to this Section 18.19 (C) in every subcontract subject to compliance with the Part 135 Regulations, and to take appropriate action upon finding that a subcontractor is in violation of the Part 135 Regulations. Grantee shall not subcontract with any subcontractor where Grantee has notice or knowledge that the subcontractor has been found in violation of the Part 135 Regulations.
5. To certify that any vacant employment positions, including training positions, that are filled (1) after a contractor is selected but before the contract is executed, and (2) with persons other than those to whom the Part 135 Regulations require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under the Part 135 Regulations.
6. Grantee hereby acknowledges and agrees that noncompliance with the Part 135 Regulations may result in sanctions, termination of this Agreement (including termination of continued funding under this Agreement), and/or debarment or suspension from future HUD assisted contracts.

D. In the event Grantee receives any payment or reimbursement hereunder, which the Funding Source later disallows, Grantee shall promptly refund the disallowed amount to MOHCD/OEWD upon MOHCD/OEWD's request. At its option, MOHCD/OEWD may offset the amount disallowed from any future payment under this Agreement.

E. Grantee agrees to comply with the following requirements insofar as they apply to the performance of this Agreement: (a) the Clean Air Act (42 U.S.C. Sections 7401 et seq.); (b) Federal Water Pollution Control Act (33 U.S.C. Sections 1251 et seq.); (c) Environmental Protection Agency regulations pursuant to 40 C.F.R. Part 50; (d) Flood Disaster Protection Act of 1973 (42 U.S.C. Section 4001); (e) HUD's lead based paint regulations at 24 C.F.R. 570.608; and (f) the National Historic Preservation Act of 1966 (16 U.S.C. Section 470) and the procedures set forth in 36 C.F.R. Part 800 on the Historic Preservation Procedures for Protection of Historic Properties.

F. Grantee acknowledges the urgent need to prevent violence and create greater community awareness regarding the negative impact of violence of youth in our communities. Grantee is encouraged, where appropriate, to direct its MOHCD/OEWD-assisted activities to benefit youth and reduce violence. The Cranston-Gonzales National Affordable Housing Act requires that procedures be implemented to ensure confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted



under the ESG and that the address or location of any ESG-assisted family violence shelter shall not be made public without the prior written authorization of the person or persons responsible for the operation of such shelter.

#### **Section 18.20 – Compliance with Lobbying Provisions (Section for CDBG, ESG and HOPWA Grants only)**

In addition to, and not in substitution for, other provisions of this Agreement regarding the provision of services with the Grant Funds, Grantee agrees to the following provisions pursuant to the Housing and Community Development Act of 1992:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of Grantee, 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 the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, Grantee will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. None of the funds, materials, property or services provided directly or indirectly under this Agreement shall be used for any partisan political activity, to further the election or defeat of any candidate for public office, or to support or defeat legislation pending before Congress.
4. Grantee will require that the language of this Section be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This is a material representation of fact upon which reliance was placed when this Agreement was made.

#### **Section 18.21 – Local Business Enterprise Utilization; Liquidated Damages**

a. **The LBE Ordinance.** Contractor shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

b. **Compliance and Enforcement**

1) **Enforcement.** If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Contracts Monitoring Division or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of CMD") may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's LBE certification. The Director of CMD will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17. By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the CMD shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City. Contractor agrees to maintain records necessary for monitoring its compliance

with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of CMD or the Controller upon request.

2) **Subcontracting Goals.** The LBE subcontracting participation goal for this contract is \_\_\_\_\_. Contractor shall fulfill the subcontracting commitment made in its bid or proposal. Each invoice submitted to City for payment shall include the information required in the CMD Progress Payment Form and the CMD Payment Affidavit. Failure to provide the CMD Progress Payment Form and the CMD Payment Affidavit with each invoice submitted by Contractor shall entitle City to withhold 20% of the amount of that invoice until the CMD Payment Form and the CMD Subcontractor Payment Affidavit are provided by Contractor. Contractor shall not participate in any back contracting to the Contractor or lower-tier subcontractors, as defined in the LBE Ordinance, for any purpose inconsistent with the provisions of the LBE Ordinance, its implementing rules and regulations, or this Section.

3) **Subcontract Language Requirements.** Contractor shall incorporate the LBE Ordinance into each subcontract made in the fulfillment of Contractor's obligations under this Agreement and require each subcontractor to agree and comply with provisions of the ordinance applicable to subcontractors. Contractor shall include in all subcontracts with LBEs made in fulfillment of Contractor's obligations under this Agreement, a provision requiring Contractor to compensate any LBE subcontractor for damages for breach of contract or liquidated damages equal to 5% of the subcontract amount, whichever is greater, if Contractor does not fulfill its commitment to use the LBE subcontractor as specified in the bid or proposal, unless Contractor received advance approval from the Director of CMD and contract awarding authority to substitute subcontractors or to otherwise modify the commitments in the bid or proposal. Such provisions shall also state that it is enforceable in a court of competent jurisdiction. Subcontracts shall require the subcontractor to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination of this contract and to make such records available for audit and inspection by the Director of CMD or the Controller upon request.

4) **Payment of Subcontractors.** Contractor shall pay its subcontractors within three working days after receiving payment from the City unless Contractor notifies the Director of CMD in writing within ten working days prior to receiving payment from the City that there is a bona fide dispute between Contractor and its subcontractor and the Director waives the three-day payment requirement, in which case Contractor may withhold the disputed amount but shall pay the undisputed amount. Contractor further agrees, within ten working days following receipt of payment from the City, to file the CMD Payment Affidavit with the Controller, under penalty of perjury, that the Contractor has paid all subcontractors. The affidavit shall provide the names and addresses of all subcontractors and the amount paid to each. Failure to provide such affidavit may subject Contractor to enforcement procedure under Administrative Code §14B.17.

#### **Section 18.22 – Small Business Enterprise Program**

Contractor shall comply with all the requirements of the Small Business Enterprise Program set forth in the Contract Monitoring Division's MOHCD Small Business Enterprise Program Manual as it now exists or as it may be amended in the future (collectively the "SBE Program"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the SBE Program are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provisions of the SBE Program is a material breach of Contractor's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the SBE Program or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

#### **Section 18.23 – 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](http://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 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 (and all references to "Contractor" shall mean Grantee).

(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 16.16(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.

#### **Section 18.24 – State Labor Standards**

Grantee shall ensure that the requirement of Chapter I (commencing with Section 1720) of Part 7 of the California Labor Code (pertaining to the payment of prevailing wages and administered by the California Department of Industrial Relations) are met.

Subsection (a) of Labor Code section 1771.1 states that "a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded." Subsection (b) of Labor Code section 1771.1 states that "notice of the requirement described in subdivision (a) shall be included in all bid invitations and public works contracts,

and a bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor's current registration to perform public work pursuant to Section 1725.5."

#### **Section 18.25 – Compliance with Other Laws**

Without limiting the scope of any of the preceding sections of this Article 18, Grantee shall keep itself fully informed of the 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.

#### **Section 18.26 – Sugar-Sweetened Beverage Prohibition**

Grantee agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 10I, as part of its performance of this Agreement.

#### **Section 18.27 –Health Care Accountability Ordinance**

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

#### **Section 18.28 - Public Access to Nonprofit Records and Meetings**

If Grantee receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Grantee must comply with the City's Public Access to Nonprofit Records and Meetings requirements, as set forth in Chapter 12L of the San Francisco Administrative Code, including the remedies provided therein.

#### **Section 18.29 – Payment Card Industry ("PCI") Requirements**

Payment Card Industry ("PCI") Requirements. Grantees providing services and products that handle, transmit or store cardholder data, are subject to the following requirements:

(a) Applications shall be compliant with the Payment Application Data Security Standard (PA-DSS) and validated by a Payment Application Qualified Security Assessor (PA-QSA). A Grantee whose application has achieved PA-DSS certification must then be listed on the PCI Councils list of PA-DSS approved and validated payment applications.

(b) Gateway providers shall have appropriate Payment Card Industry Data Security Standards (PCI DSS) certification as service providers (<https://www.pcisecuritystandards.org/index.shtml>). Compliance with the PCI DSS shall be achieved through a third party audit process. The Grantee shall comply with Visa Cardholder Information Security Program (CISP) and MasterCard Site Data Protection (SDP) programs.

(c) For any Grantee that processes PIN Debit Cards, payment card devices supplied by Grantee shall be validated against the PCI Council PIN Transaction Security (PTS) program.

(d) For items (a) to (c) above, Grantee shall provide a letter from their qualified security assessor (QSA) affirming their compliance and current PCI or PTS compliance certificate.

(e) Grantee shall be responsible for furnishing City with an updated PCI compliance certificate 30 calendar days prior to its expiration.

(f) Bank Accounts. Collections that represent funds belonging to the City and County of San Francisco shall be deposited, without detour to a third party's bank account, into a City and County of San Francisco bank account designated by the Office of the Treasurer and Tax Collector.

#### **Section 18.30 – Minimum Wage**

Grantee shall comply fully with and be bound by all of the provisions of the Minimum Wage Ordinance (MWO), as set forth in Chapter 12R of the San Francisco Administrative Code, including the administrative fines, remedies, and

penalties provided therein, as the same may be amended from time to time. The provisions of Chapter 12R are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of Chapter 12R is available on the web at <http://sfgov.org/olse/minimum-wage-ordinance-mwo>.

## **ARTICLE 19 MISCELLANEOUS**

### **Section 19.01 – No Waiver**

No waiver by MOHCD/OEWD or City of any default or breach of this Agreement shall be implied from any failure by MOHCD/OEWD or City to take action on account of such default if such default persists or is repeated. No express waiver by MOHCD/OEWD 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 MOHCD/OEWD or City 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 MOHCD/OEWD 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.

### **Section 19.02 – 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. Any proposed amendment to this Agreement may be subject to the approval of the Funding Source agency where the City determines it is necessary.

### **Section 19.03 – 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 of MOHCD/OEWD who shall decide the true meaning and intent of the Agreement. Such decisions shall be final and conclusive.

### **Section 19.04 – 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.

### **Section 19.05 – 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.

### **Section 19.06 – 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 appendix is attached to and a part of this Agreement:

Appendix A:	Fund Source Information, Work Program(s) and Project Budget(s)
Appendix B:	Interests in Other City Contracts

### **Section 19.07 – 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.

#### **Section 19.08 – 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.

#### **Section 19.09 – Successors; No Third-Party Beneficiaries**

Subject to the terms of Article 7, 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 12, 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.

#### **Section 19.10 – 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 7.04, Sections 9.04 through 9.07, Articles 10 and 12, Section 13.04, Article 15, Section 16.03 and this Article 19.

#### **Section 19.11 – Grievance Procedures**

Grantee shall maintain written grievance procedures, which allow Grantee's employees, clients and any subcontractors to submit complaints regarding the activities funded by this Agreement. Grantee shall inform its employees, clients and subcontractors of their rights to submit a complaint and shall provide a written copy of its grievance procedure upon request.

#### **Section 19.12 – Attendance at Meetings**

If requested by City, Grantee's Executive Director, Program Director or other designated staff shall attend specified meetings. Failure to attend said meetings without adequate reason as determined by City should be grounds for termination of this Agreement.

#### **Section 19.13 – 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.

#### **Section 19.14 – 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.

#### **Section 19.15 – Departmental Transition and Continuity (Section for ESG Grants only)**

Over the course of the term of this Agreement, it is anticipated that management of this contract on behalf of the City shall transfer from MOHCD to a new department which shall be established for the purpose of coordinating homeless services. As part of the transfer, the departmental contact and invoicing procedures specified in this Agreement may shift from MOHCD to the new department, however the responsibilities under this Agreement shall not change. MOHCD shall notify Contractor/Grantee of the new departmental contact and invoicing procedures. At such time as notice is given, all references in this Agreement to MOHCD or the "Department" shall be construed as a reference to the new department.

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

**CITY AND COUNTY OF SAN FRANCISCO,**  
a municipal corporation

**GRANTEE:** 1064 MISSION HOMELESS  
SERVICES CENTER, LLC

BY: \_\_\_\_\_  
LONDON N. BREED, MAYOR

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.

BY: \_\_\_\_\_  
Daniel Adams, Acting Director  
Mayor's Office of Housing and Community  
Development

I have read and understood Section 18.02, 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.

**OR**

BY: \_\_\_\_\_  
JOAQUIN TORRES, Director  
Office of Economic and Workforce Development

By: Mercy Housing Calwest, a California nonprofit public benefit corporation, its sole member

BY: \_\_\_\_\_

APPROVED AS TO FORM:

**Print Name:** \_\_\_\_\_

DENNIS J. HERRERA  
CITY ATTORNEY

**Title:** \_\_\_\_\_

BY: \_\_\_\_\_  
HEIDI J. GEWERTZ  
Deputy City Attorney

(If the person signing is **NOT** the Board President/Chair or other officer authorized to execute legal instruments under Grantee's Bylaws, Grantee must provide City with a corporate resolution pursuant to Section 19.07)

MOHCD/OEWD Grant Agreement from \_\_\_\_\_ Start Date to \_\_\_\_\_ Grant Agreement End Date  
\$13,450,689 Grant Agreement Amount\*\*  
MOHCD/OEWD Grant Coordinator: Anne Romero

\*\*The Grant amount is contingent on the availability of funds from the Funding Source as allocated and approved by the Mayor and the Board of Supervisors. MOHCD/OEWD reserves the right to make necessary correction and adjustment to the Grant Amount if there are errors or discrepancies.

## **Appendix A**

**Agency Name: 1064 Mission Homeless Services Center, LLC,**

### **Fund Source Information, Work Program and Project Budget**

**Funding Source(s) Information:**

<b>Funding Source</b>	General Fund, COP, GO Bonds
<b>Total Amount Granted by this Agreement</b>	\$13,450,689
<b>Federal Award Identification Number (FAIN)</b>	N/A
<b>Federal Award Date</b>	N/A
<b>Total Amount of the Federal Award</b>	N/A
<b>Federal Award Project Description</b>	N/A
<b>Federal Awarding Agency</b>	N/A
<b>CFDA Number and Name</b>	N/A
<b>Award for R&amp;D?</b>	N/A
<b>Indirect Cost Rate for the Federal Award</b>	N/A
<b>Negotiated Maximum Indirect Cost Rate between MOHCD/OEWD and Agency</b>	N/A

**[WORK PROGRAM AND PROJECT BUDGET FOLLOWS THIS PAGE]**



## **Work Program**

The Amended and Restated Grant Agreement will fund expenses associated with the development of the proposed **Homeless Services Center (HSC)** on the first and second floors of 1064-68 Mission to be co-operated by the Department of Public Health (DPH) and the Department of Homelessness and Supportive Housing (HSH). The HSC will face Stevenson Street and will provide space for four distinct homeless serving programs in approximately 20,000 SF. The HSC will include the relocated Tom Waddell Urgent Care Clinic, the Street Medicine program, dental services, and the SF Homeless Outreach Team (SF HOT). The surrounding permanent supportive housing residential program and the co-located HSC is being developed in close collaboration amongst the developer team, HSH, DPH and MOHCD.

Development funds are being work ordered by DPH and HSH to MOHCD for loan disbursement, and include the predevelopment grant funds that have been disbursed to date.

## **Development Budget for the HSC Amended and Restated City Grant Agreement**

**Appendix B—Interests In Other City Contracts**  
**2019-20**

City Department or Commission	Date of Contract	Amount of Contract
None		

### **Appendix C – Labor Standards**

Prevailing Wages. Every contract for the rehabilitation or construction of housing assisted with Funds must contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. §§ 276a-276a-5), to all laborers and mechanics employed in the development of any part of the housing, and contracts involving their employment will be subject to the provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-332). The prevailing wage requirements of this Section apply to all laborers and mechanics employed in the development of the HSC.

## **Appendix D – Insurance Requirements**

Subject to approval by the City's Risk Manager of the insurers and policy forms, Grantee must obtain and maintain, or caused to be maintained, the insurance and bonds as set forth below from the date of this Agreement throughout the Compliance Term at no expense to the City:

### **1. Grantee, Contractors.**

(a) to the extent Grantee or its contractors and subcontractors have "employees" as defined in the California Labor Code, workers' compensation insurance with employer's liability limits not less than One Million Dollars (\$1,000,000) each accident, injury or illness;

(b) commercial general liability insurance, with limits no less than One Million Dollars (\$1,000,000) combined single limit per occurrence and Two Million Dollars (\$2,000,000) annual aggregate limit for bodily injury and property damage, including coverage for contractual liability; personal injury; fire damage legal liability; advertisers' liability; owners' and contractors' protective liability; products and completed operations; broad form property damage; and explosion, collapse and underground (XCU) coverage during any period in which Grantee is conducting any activity on, alteration or improvement to the Site with risk of explosions, collapse, or underground hazards;

(c) business 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, hired and non-owned auto coverage, as applicable;

(d) professional liability insurance of no less than One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) annual aggregate limit covering all negligent acts, errors and omissions of Grantee's architects, engineers and surveyors. If the professional liability insurance provided by the architects, engineers, or surveyors is "Claims made" coverage, Grantee shall assure that these minimum limits are maintained for no less than three (3) years beyond completion of the constructions or remodeling. Any deductible over Fifty Thousand Dollars (\$50,000) each claim must be reviewed by Risk Management; and

(e) Contractor shall maintain throughout the term of this contract, at no expense to City, a blanket fidelity bond or a Crime Policy (Employee Dishonesty Coverage) that includes coverage for employee dishonesty, forgery & alteration, theft of money & securities, and theft via electronic means, endorsed to cover third party fidelity, covering all officers and employees in an amount not less than \$3 million with any deductible not to exceed \$50,000 and including City as additional obligee or loss payee as its interest may appear. Application of Crime Insurance Proceeds. Grantee shall promptly notify Lender of any claim under the required Crime Insurance Policy. Lender may retain from the proceeds of the required Crime Insurance Policy, a sufficient amount of the proceeds to pay the Indebtedness, if any, and shall pay the balance to Grantee. For the avoidance of doubt, Lender shall have no right or claim to the proceeds of the required Crime Insurance Policy in excess of the Indebtedness.

(f) pollution liability and/or asbestos pollution liability applicable to the work being performed with a limit no less than One Million Dollars (\$1,000,000) per claim or occurrence and Two Million Dollars (\$2,000,000) annual aggregate per policy. This coverage shall be endorsed to include Non-Owned Disposal Site coverage. This policy may be provided by the Grantee's contractor, provided that the policy must be "claims made" coverage and Grantee must require

Grantee's contractor to maintain these minimum limits for no less than three (3) years beyond completion of the construction or remodeling.

2. Property Insurance.

Grantee must maintain, or cause its contractors and property managers, as appropriate for each, to maintain, insurance and bonds as follows:

(a) Prior to construction:

(i) Property insurance, excluding earthquake and flood, in the amount no less than One Hundred Percent (100%) of the replacement value of all improvements prior to commencement of construction and City property in the care, custody and control of the Grantee or its contractor, including coverage in transit and storage off-site; the cost of debris removal and demolition as may be made reasonably necessary by such perils, resulting damage and any applicable law, ordinance or regulation; start up, testing and machinery breakdown including electrical arcing; and with a deductible not to exceed Ten Thousand Dollars (\$10,000) each loss, including the City and all subcontractors as loss payees.

(b) During the course of construction:

(i) Builder's risk insurance, special form coverage, excluding earthquake and flood, for one hundred percent (100%) of the replacement value of all completed improvements and City property in the care, custody and control of the Grantee or its contractor, including coverage in transit and storage off-site; the cost of debris removal and demolition as may be made reasonably necessary by such covered perils, resulting damage and any applicable law, ordinance or regulation; start up, testing and machinery breakdown including electrical arcing, copy of the applicable endorsement to the Builder's Risk policy, if the Builder's Risk policy is issued on a declared-project basis; and with a deductible not to exceed Fifty Thousand Dollars (\$50,000) each loss, including the City and all subcontractors as loss payees.

(ii) A General Contractor Performance and payment bond of contractor, each in the amount of One Hundred Percent (100%) of contract amount, naming the City and Grantee as dual obligees or other completion security approved by the City in its sole discretion.

(c) Upon completion of construction, insurance to be covered by the City and County of San Francisco.

4. General Requirements.

(a) General and automobile liability policies of Grantee, contractors, commercial tenants and property managers must include the City, including its Boards, commissions, officers, agents and employees, as an additional insured by endorsement acceptable to the City.

(b) All policies required by this Agreement must be endorsed to provide no less than thirty (30) days' written notice to the City before cancellation or intended non-renewal is effective.

(c) With respect to any property insurance, Grantee hereby waives all rights of subrogation against the City to the extent of any loss covered by Grantee's insurance, except to the extent subrogation would affect the scope or validity of insurance.

(d) Approval of Grantee's insurance by the City will not relieve or decrease the liability of Grantee under this Agreement.

(e) Any and all insurance policies called for herein must contain a clause providing that the City and its officers, agents and employees will not be liable for any required premium.

(f) The City reserves the right to require an increase in insurance coverage in the event the City determines that conditions show cause for an increase, unless Grantee demonstrates to the City's satisfaction that the increased coverage is commercially unreasonable and unavailable to Grantee.

(g) All liability policies must provide that the insurance is primary to any other insurance available to the additional insureds with respect to claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought and that an act of omission of one of the named insureds that would void or otherwise reduce coverage will not void or reduce coverage as to any other insured, but the inclusion of more than one insured will not operate to increase the insurer's limit of liability.

(h) Any policy in a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs are included in the general annual aggregate limit must be in amounts that are double the occurrence or claims limits specified above.

(i) All claims based on acts, omissions, injury or damage occurring or arising in whole or in part during the policy period must be covered. If any required insurance is provided under a claims-made policy, coverage must be maintained continuously for a period ending no less than three (3) years after recordation of a notice of completion for builder's risk or the Compliance Term for general liability and property insurance.

(j) Grantee must provide the City with copies of endorsements for each required insurance policy and make each policy available for inspection and copying promptly upon request.

