

File No. 191115

Committee Item No. 12

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date November 13, 2019

Board of Supervisors Meeting

Date _____

Cmte Board

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
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OTHER (Use back side if additional space is needed)

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Request for Qualifications</u> |
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Completed by: Linda Wong Date November 8, 2019

Completed by: Linda Wong Date _____

1 [Grant Agreement Amendment - 1064 Mission Homeless Services Center LLC - City-Owned
2 and Operated Homeless Services Center - 1064-1068 Mission Street - Not to Exceed
3 \$13,450,689]

4 **Resolution approving and authorizing the Director of the Mayor's Office of Housing and**
5 **Community Development to execute an amended and restated Grant Agreement with**
6 **1064 Mission Homeless Services Center LLC, a California limited liability corporation,**
7 **in an amount not to exceed \$13,450,689 to finance the construction of a City-owned**
8 **and operated Homeless Services Center for residents experiencing homelessness,**
9 **located on the two floors on the ground level of 1064-1068 Mission Street facing**
10 **Stevenson Street, to commence upon Board approval, for a grant period of August 1,**
11 **2019, through August 1, 2021.**

12
13 WHEREAS, The City and County of San Francisco ("City"), acting through the Mayor's
14 Office of Housing and Community Development ("MOHCD"), administers a variety of housing
15 programs that provide financing for the development of new affordable housing and the
16 rehabilitation of single- and multi-family housing for low- and moderate-income households
17 and resources for homeowners in San Francisco; and

18 WHEREAS, MOHCD enters into loan agreements with affordable housing developers
19 and operators; administers loan agreements; reviews annual audits and monitoring reports;
20 monitors compliance with affordable housing requirements in accordance with capital funding
21 regulatory agreements; and if necessary, takes appropriate action to enforce compliance; and

22 WHEREAS, The real property owned by United States, in the City and located at 1064-
23 1068 Mission Street between Sixth and Seventh Streets ("Property"), was declared surplus
24 and is subject to assignment for disposal for homeless serving purposes by the Secretary of
25 Health and Human Services under the provisions of Section 203(k)(1) of the Federal Property

1 and Administrative Services Act of 1949, as amended, and Title V of the McKinney-Vento
2 Homeless Assistance Act, as amended; and the rules and regulations promulgated thereto;
3 and

4 WHEREAS, On May 23, 2017, the Board of Supervisors approved an application to
5 acquire the Property for \$1 from the Department of Health and Human Services ("HHS")
6 Federal Property Assistance Program for use in constructing supportive housing for homeless
7 San Franciscans (Resolution No. 178-17); and

8 WHEREAS, MOHCD submitted an application to acquire the real property and in a
9 letter dated August 7, 2017, HHS determined that the City's application was approved for a
10 lease acquisition, with the requirement that the City provide copies of any and all financing
11 commitments and proposed documents that affect title to the property for HHS review and
12 approval; and upon demonstration of the City's ability to obtain the needed funding in line with
13 federal requirements, the City can request that the lease be converted to a Quitclaim Deed;
14 and

15 WHEREAS, An appraisal dated May 17, 2017, valued the Property at \$36,000,000;
16 and

17 WHEREAS, On October 10, 2017, MOHCD issued a Request for Qualifications
18 ("RFQ"), seeking submittals from qualified respondents to develop the Property as permanent
19 supportive housing for adults and seniors experiencing homelessness; and

20 WHEREAS, The joint development team of Episcopal Community Services and Mercy
21 Housing California, California nonprofit public benefit corporations, jointly responded to the
22 RFP and were selected to be the developer for the Property; and

23 WHEREAS, Episcopal Community Services and Mercy Housing California established
24 1064 Mission, L.P., a California limited partnership ("Lessee"), as a separate entity under
25 which to develop the Project and 1064 Mission Homeless Services Center, LLC, as a

1 separate entity under which to develop the Homeless Services Center ("Grantee"); and

2 WHEREAS, On November 1, 2018, HHS, entered into a short term lease of the
3 Property with the City; and

4 WHEREAS, Two stories accessed from Stevenson Street, with a total of approximately
5 20,000 square feet, will be retained with the land for the City to develop a Homeless Services
6 Center ("HSC") to be operated by the Departments of Public Health ("DPH") and
7 Homelessness and Supportive Housing ("HSH") for homeless clients and which is not part of
8 the residential ground leased parcel; and

9 WHEREAS, The HSC will be dedicated to providing a full range of health services for
10 people experiencing homelessness including the relocated Tom Waddell Urgent Care Clinic
11 ("TWUC") providing urgent care and transitional primary care services both for walk-in patients
12 and those brought in by the City's Street Medicine Team; dental care; behavioral health care,
13 including substance use counseling and referrals; case management; podiatry; and nursing
14 care; as well as administrative and operational space for the HSH San Francisco Homeless
15 Outreach Team ("SFHOT"), whose staff provides outreach to residents currently experiencing
16 homelessness throughout the City as well as seeing some clients on site; and shared spaces
17 for staff from both DPH and HSH to work and collaborate; and

18 WHEREAS, The Grantee will develop the HSC as a separate project on behalf of the
19 City in conjunction with the development of the residential permanent supportive housing by
20 1064 Mission L.P. located on the Property (the "Residential Parcel"); and

21 WHEREAS, DPH and HSH have identified funds to develop the HSC in the
22 approximate amount of \$15,063,994 composed of Certificates of Participation, General
23 Obligation Bond Funds and General Fund monies (collectively, the "Funds") that have been
24 approved by the Board or are concurrently, with this Resolution, being considered for approval
25 by the Board; and

1 WHEREAS, For project efficiency, DPH and HSH propose to work order the Funds to
2 MOHCD who is disbursing Loan Funds for the adjacent residential project; now, therefore, be
3 it

4 RESOLVED, That the Board of Supervisors hereby approves the Grant Agreement and
5 authorizes the Director of MOHCD or his designee to enter into any amendments or
6 modifications to the Agreement (including, without limitation, preparation and attachment or,
7 or changes to, any of all of the exhibits and ancillary agreements) and any other documents or
8 instruments necessary in connection therewith that the Director determines, in consultation
9 with the City Attorney, are in the best interest of the City, do not materially increase the
10 obligations or liabilities for the City or materially diminish the benefits of the City, are
11 necessary or advisable to effectuate the purposes and intent of this Resolution and are in
12 compliance with all applicable laws, including the City Charter; and, be it

13 FURTHER RESOLVED, That all actions authorized and directed by this Resolution and
14 heretofore taken are hereby ratified, approved and confirmed by this Board of Supervisors;
15 and, be it

16 FURTHER RESOLVED, That within thirty (30) days of the Agreement being fully
17 executed by all parties, MOHCD shall provide the final Agreement to the Clerk of the Board
18 for inclusion into the official file.

19 RECOMMENDED:

20 
21 Daniel Adams, Acting Director
22 Mayor's Office of Housing and Community Development

23 n:\spec\as2019\1900280\01402372.docx
24
25

Items 10, 11, & 12 Files 19-1012, 19-1019, 19-1115	Department: Mayor's Office of Housing & Community Development
EXECUTIVE SUMMARY	
<p style="text-align: center;">Legislative Objectives</p>	
<ul style="list-style-type: none"> • Files 19-1019 and 19-1012: The proposed resolution and ordinance would approve the issuance of certificates of participation in an amount not to exceed \$7,250,000 and appropriate those funds to finance a portion of the development costs of the Homeless Service Center at 1064-68 Mission Street. • File 19-1115: The proposed resolution would approve an amended and restated grant agreement between the Mayor's Office of Housing and Community Development (MOHCD) and 1064 Mission Homeless Services Center LLC for \$13,450,689 to finance the construction of the of Homeless Service Center at 1064-68 Mission Street. The amended grant includes the certificates of participation in Files 19-1019 and 19-1012. 	
<p style="text-align: center;">Key Points</p>	
<ul style="list-style-type: none"> • The City is funding the development of a Homeless Service Center at 1064-68 Mission Street, which will be co-located with 258 units of supportive housing (File 19-1114 of this report). The site will be jointly developed by Mercy Housing California and Episcopal Community Services and the Homeless Services Center will be co-owned by the Departments of Public Health and Homelessness & Supportive Housing. Construction is expected to occur January 2020 to August 2021. • The Departments of Public Health and Homelessness & Supportive Housing will relocate existing programs to this new Homeless Service Center, including the Tom Waddell Urgent Care and Dental Clinic, the Street Medicine team, behavioral health services, and the San Francisco Homeless Outreach Team (SF HOT). 147 staff are expected to be relocated. 	
<p style="text-align: center;">Fiscal Impact</p>	
<ul style="list-style-type: none"> • The cost to develop the Homeless Service Center is \$16,147,863, of which \$13,450,689 is subject of the proposed amended grant agreement (File 19-1115). Sources of funds for the \$13,450,689 grant agreement include proceeds from the certificates of participation (Files 19-1019 and 19-1012), \$3.45 million General Fund contributions from the Department of Public Health, and \$5 million from the 2016 Public Health & Safety General Obligation Bond. • The anticipated incremental debt service associated with the certificates of participation complies with the City's policy of limiting General Fund debt service payments at or below 3.25 percent of General Fund Discretionary Revenue. 	
<p style="text-align: center;">Recommendation</p>	
<ul style="list-style-type: none"> • Approve the proposed resolutions and ordinance. 	

MANDATE STATEMENT

City Charter Section 9.105 states that amendments to the Annual Appropriation Ordinance are subject to Board of Supervisors approval by ordinance after the Controller certifies the availability of funds.

City Charter Section 9.113(e) states that the Board of Supervisors has the authority to borrow money on an interim basis through the issuance of its commercial paper notes and other short term debt.

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

City Administrative Code Section 10.62(b) states that the Board of Supervisors may authorize the issuance of Certificates of Participation (COPs) and other lease financing debt to fund capital projects provided the annual debt service cost of such outstanding indebtedness does not exceed 3.25% of discretionary revenue as determined by the Controller and Director of Public Finance.

City Administrative Code Section 10.62(c) states that the Director of Public Finance may issue tax-exempt and taxable commercial paper notes to provide interim funds to finance the acquisition, construction and rehabilitation of capital improvements and capital equipment, subject to the project's and financing plan's approval by the Board of Supervisors and Mayor.

BACKGROUND**Homeless Service Center at 1064-68 Mission Street**

The City is funding the development of a Homeless Service Center at 1064-68 Mission Street, which will be co-located with 258 units of supportive housing (File 19-1114 of this report). The site will be jointly developed by Mercy Housing California and Episcopal Community Services and the Homeless Services Center will be owned by City and jointly operated by the Departments of Public Health and Homelessness & Supportive Housing. Episcopal Community Services, one of the developers, will relocate a training program for formerly homeless persons, the Conquering Homelessness through Employment in Food Services (CHEFS) program, to the new Homeless Service Center. The property will be managed by Caritas Management Corporation. Construction is expected to occur January 2020 to August 2021.

The Departments of Public Health and Homelessness & Supportive Housing will relocate other existing programs to this new Homeless Service Center, including the Tom Waddell Urgent Care and Dental Clinic, the Street Medicine team, behavioral health services, and the San Francisco Homeless Outreach Team (SF HOT). These programs will serve homeless persons within the City. One Deputy Sheriff will be stationed on-site during program hours, 8am – 7pm.

DETAILS OF PROPOSED LEGISLATION

File 19-1019: The proposed resolution would approve the issuance of certificates of participation (COPS) in an amount not to exceed \$7,250,000 to finance a portion of the costs of the Homeless Service Center at 1064-68 Mission Street. The resolution would also authorize issuance of commercial paper on an interim basis in advance of the execution and delivery of the COPS and to be repaid with proceeds from the COPS.

File 19-1012: The proposed ordinance would appropriate \$7,250,000 of proceeds of certificates of participation to the Department of Public Health to fund construction costs for the Homeless Services Center in FY2019-2020 and related issuance costs; and placing these funds on Controller's Reserve pending the sale of the certificates of participation.

File 19-1115: The proposed resolution would approve an amended and restated grant agreement between the Mayor's Office of Housing and Community Development (MOHCD) and 1064 Mission Homeless Services Center LLC for \$13,450,689 to finance the construction of the of Homeless Service Center at 1064 Mission Street.

Legislation Approving the Development of the Homeless Service Center

The cost to develop the Homeless Service Center is \$16,147,863, shown in Table 1 below. Of the \$16,147,863 development cost, \$13,450,689 is a grant agreement between MOHCD and 1064 Mission Homeless Services Center LLC to finance the construction (File 19-1115). File 19-1115 increases the total grant agreement from the previous grant amount of \$775,439 to the new grant amount of \$13,450,689. Sources of funds for the \$13,450,689 grant agreement include COPS proceeds (Files 19-1019 and 19-1012).

Table 1: Homeless Service Center Development

Sources	City Sources	Non-City Sources	Total
<u>Grant Agreement</u>			
2016 Public Health & Safety Bond GO Bonds	\$5,000,000	\$0	\$5,000,000
Certificates of Participation (Files 19-1012 and 19-1019)	5,000,000	0	5,000,000
General Fund	3,450,689	0	3,450,689
Subtotal, Grant Agreement (File 19-1115)	\$13,450,689	\$0	\$13,450,689
General Fund - Reimbursement to MOHCD	1,618,304	0	1,618,304
Tax Credit Equity	0	1,078,870	1,078,870
Total Sources	\$15,068,993	\$1,078,870	\$16,147,863
<u>Uses</u>			
<u>Soft Costs</u>			
Architecture & Design	\$656,880	\$0	\$656,880
Engineering & Environmental Studies	118,061	0	118,061
Construction Financing Costs	0	0	0
Permanent Financing Costs	0	0	0
Legal Costs	0	0	0
Other Development Costs	457,981	0	457,981
Contingency (13%)	160,000	0	160,000
Subtotal Soft Costs	\$1,392,922	\$0	\$1,392,922
Acquisition	5,000	0	5,000
Construction	9,433,794	1,078,870	\$10,512,664
Construction Contingency (22%)	2,318,974	0	\$2,318,974
Operating Reserves	\$0	0	\$0
Developer Fees	300,000	0	300,000
Reimbursement to MOHCD	1,618,304	0	1,618,304
Total Uses	\$15,068,993	\$1,078,870	\$16,147,863

Source: MOHCD

According to Ms. Anne Romero, MOHCD project manager, the contingencies of 13 percent for soft costs and 22 percent for construction costs for the Homeless Service Center are higher than those in the supportive housing budget (7 percent and 16 percent respectively, shown in Table 1 of File 19-1114 of this report) because at the time of the financing request, the design of the Homeless Services Center was less advanced than the design of the supportive housing which could lead to higher design and construction costs.

Costs of Homeless Service Center Programs

The FY 2019-20 costs of \$17 million for the following programs that will be relocated to the Homeless Service Center are shown below in Table 2 below. These are existing programs that will service residents at the proposed supportive housing development at 1064-68 Mission Street and as well as continue to service clients Citywide through the Homeless Service Center. According to Ms. Jenny Louie, Budget Manager at the Department of Public Health, and Gigi Whitley, Deputy Director of Administration & Finance at the Department of Homelessness & Supportive Housing, none of the existing programs that are being relocated are expected to expand.

Table 2: Costs of Homeless Service Center Programs

Program/Service	Estimated FY 2020-21 Costs
One-time moving and equipment costs for relocating DPH clinical services	\$2,062,536
One-time costs	\$2,062,536
Tom Waddell Urgent Care, Street Medicine, & Shelter Health	\$8,200,000
Homeless Outreach Team (HOT)	12,836,884
Deputy Sheriff	485,222
Ongoing costs	\$21,522,106

Sources: Departments of Public Health, Homeless & Supportive Housing, and Sheriff

Notes: Program costs reflect FY 2019-20 values and will be higher in FY 2020-21 when the Homeless Service Center becoming operational. Moving and equipment (furniture, fixtures, & equipment) costs for relocating the Department of Public Health's clinical programs to 1064-68 Mission are included in the FY 2019-20 budget. Moving and equipment costs to relocate the HOT team will be requested in the FY 2020-21 budget.

As shown above, one-time moving and equipment costs to relocate Department of Public Health clinical programs that provide services to homeless persons are estimated to be \$2 million and are included in the FY 2019-20 budget. Moving and equipment costs to relocate the Homeless Outreach Team will be requested in the FY 2020-21 budget. An additional new and ongoing cost of \$485,222 will be the cost of stationing a Deputy Sheriff during clinic hours, Monday – Saturday 8 am – 7pm.

Acquisition of 1064-68 Mission Street

The property at 1064-68 Mission Street was leased to the City from the U. S. Department of Health and Human Services (HHS) in October 2018 at no cost. The land was made available at below market rate through a federal program known as McKinney-Vento Homeless Assistance Act, which makes surplus federal properties available to assist homeless persons. In May 2017, the Board of Supervisors approved a resolution authorizing MOHCD to submit an application to the HHS Federal Property Assistance Program to acquire the property located at 1064 and 1068 Mission Street for use in constructing permanent supportive housing for formerly homeless San Franciscans (File 17-0474).

The lease has a three year term with options to extend up to twenty years and requires the City to begin using the property to deliver services to homeless persons within the three year initial term. MOHCD plans to acquire the land at 1064-68 Mission Street upon approval of the gap financing for construction of supportive housing (File 19-1114) and grant agreement for the construction of the Homeless Service Center (19-1115). Although the land has an estimated market value of \$36 million, the City will be able to purchase it for \$1.00 through the Federal Property Assistance Program.

10 Year Capital Plan

The Homeless Service Center project at 1064-68 Mission Street is in the City's 10 Year FY 2020-2029 Capital Plan, which was approved by the Board of Supervisors. The Capital Plan includes

the \$5 million in COPS and \$5 million of general obligation bond funding allocated to the construction of the Homeless Service Center. The \$5 million of COPS is part of the \$108 million "Public Health 101 Grove Exit COP" identified in the Capital Plan for the planned relocation of staff out of the seismically unsafe 101 Grove Street.¹ The \$5 million in bond funding is from the 2016 General Obligation Public Health and Safety.

FISCAL IMPACT

Funding Sources for Homeless Service Center

Grant Agreement (File 19-1115)

As shown in Table 1 above, the total expected development cost for the Homeless Service Center is \$16,147,863, of which \$13,450,689 would be paid for by a grant from MOHCD. Sources of funds for the \$13,450,689 grant agreement include:

- \$5,000,000 in 2016 Public Health & Safety Bond General Obligation Bonds²
- \$5,000,000 in Certificates of Participation, shown in Table 3 below (Files 19-1019 and 19-1012)
- \$3,450,689 in General Fund monies, previously appropriated by the Board of Supervisors in the FY 2019-20 DPH budget.

Other Funding Sources

The other sources of funds to develop the Homeless Service Center, shown in Table 1 above, include:

- \$1,618,304 in reimbursement from the General Fund allocations to the Department of Public Health, to offset a portion of the shell construction that structurally supports offices for their programs as well as the residential units and is therefore eligible for tax credits.
- \$1,078,870 in tax credit equity, allocated to the developer by the California Tax Credit Allocation Committee for the shell construction.

Issuance and Appropriation of Certificates of Appropriation

Tables 3 below shows the sources and uses of the COPS funding (Files 19-1019 and 19-1012).

¹ The \$108 million includes the relocation of staff to Laguna Honda Hospital and San Francisco General Hospital.

² As of June 2019, the City had issued \$223,075,000 of the \$350,000,000 authorized by voters for this General Obligation bond in 2016, leaving approximately \$126,925,000 remaining in bond authority.

Table 3: Certifications of Participation Funding

Sources and Uses	Amount
Sources	
COP Par Amount	\$7,250,000
Uses	
Homeless Services Center	\$5,000,000
Audit Fee	10,000
Subtotal Estimated Project Costs	\$5,010,000
Debt Service Reserve Fund ^a	\$637,950
Capitalized Interest/Fees ^a	904,800
Issuance Costs	403,215
Underwriter's Discount Fee	49,035
Subtotal Costs of Issuance	\$1,995,000
Total Estimated Costs	\$7,005,000
Reserve for Market Uncertainty	245,000
Total Uses	\$7,250,000

Source: Office of Public Finance

^a The debt service reserve fund sets aside funds equal to one year of debt service to account for financial uncertainty in repayment of the debt. The capitalized interest fund is the source of funds to repay debt prior to completion of the project.

As shown in Table 3 above, of the \$7,250,000, \$5 million will be allocated to fund development of the Homeless Services Center (the \$5 million allocation is also shown in Table 1 above), \$10,000 for the City Services Auditor to review the project, and the remaining \$1,995,000 is the cost of the issuance, with an additional \$245,000 reserve for market uncertainty.

City's Debt Policies

As noted above, the current plan of finance anticipates utilizing the City's commercial paper program, which was approved by the Board of Supervisors in March 2009 (File 09-0197) and March 2010 (File 10-0269) to finance project costs pending issuance of the COPs. Of the City's total commercial paper program of \$250 million re-authorized by the Board of Supervisors in May 2016 (File 16-0427); \$205.4 million was unencumbered as of November 13, 2019.

The City's policy is to limit General Fund debt service at or below 3.25 percent of discretionary General Fund revenues. According to Ms. Anna Van Degna, Director of Public Finance, the anticipated incremental debt service associated with the delivery and execution of the COPs complies with the City's policy of limiting General Fund debt service payments at or below 3.25 percent of General Fund Discretionary Revenue.

According to Ms. Van Degna, the Office of Public Finance intends to sell the COPS through a competitive sale.

RECOMMENDATION

Approve the proposed resolutions and ordinance.



City and County of San Francisco

Mayor's Office of Housing and Community Development
1 South Van Ness Avenue, 5th 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

Funding Sources:	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

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 – Supersedure of Conflicting Provisions

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

ARTICLE 3 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, 5th 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. 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 101, 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:

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

Application Date:
Project Name:
Project Address:
Project Sponsor:

Units: 258
Bedrooms: 258
Beds:

LOSP Project

Don't forget to fill in D135.D138!

1,618,304	1,078,870	5,000,000	3,450,690	5,000,000	16,147,864	Comments
MOHCD - HSC to reimburse w/ General Fund	Tax Credit	DPH - Certificates of Participation	DPH - General Fund	HSH - G.O. Bonds	TOTAL HSC	
Name of Sources:						

USES

ACQUISITION

Acquisition cost or value						
Legal Closing costs / Broker's Fee	0	0	0	0	0	0
Holding Costs						
Transfer Tax						
TOTAL ACQUISITION	0	0	0	0	0	0

CONSTRUCTION (HARD COSTS)

Unit Construction/Rehab			4,153,888		4,153,888	8,307,736	
Commercial Shell Construction	1,618,304	1,078,870				2,697,174	
Foundation						0	
Environmental Remediation						0	
Onsite Improvements/landscaping			101,000		101,000	202,000	
Offsite Improvements						0	
Infrastructure Improvements						0	HOPE SFDCR costs for streets etc
Parking						0	
GC Bond Premium/GC Insurance/GC Taxes			214,211			214,211	
GC Overhead & Profit			372,221			372,221	
GC General Conditions			158,670			178,928	
Sub-total Construction Costs	1,618,304	1,078,870	5,000,000	0	4,433,794	12,130,868	
Design Contingency (remove at LID)				777,859		777,859	5% up to \$30M/HSC 4% \$30-\$45MM 3% \$45MM+
Bid Contingency (remove at LID)				703,404	129,856	833,260	Includes escalation
Plan Check Contingency (remove/reduce during Plan Review)				198,199		198,199	4% up to \$30MM HSC 3% \$30-\$45MM 2% \$45MM+
Hard Cost Construction Contingency				123,308	436,348	559,656	144,69348
Sub-total Construction Contingencies	0	0	0	1,079,761		2,118,974	
TOTAL CONSTRUCTION COSTS	1,618,304	1,078,870	5,000,000	1,079,761	5,000,000	14,448,942	

SOFT COSTS

Architecture & Design

Architect design fees				461,423		461,423	See MOHCD A&E Fee Guidelines
Design Subconsultants to the Architect (incl. Fees)				50,676		50,676	http://mohcd.org/documents-reports-and-forms
Architect Construction Admin				108,560		108,560	
Reimbursables				10,000		10,000	
Additional Services						0	
Sub-total Architect Contract	0	0		630,659		630,659	
Other Third Party design consultants (not included under Architect contract)				26,021		26,021	Civil Exterior Maintenance, Security, waterproofing
Total Architecture & Design	0	0		656,680		656,680	

Engineering & Environmental Studies

Survey				24,040		24,040	
Geotechnical studies				21,579		21,579	
Phase I & II Reports				9,446		9,446	
CEQA / Environmental Review consultants						0	
NEPA / 106 Review						0	
CHARPA (rehab only)						0	Archaeology
Other environmental consultants				63,000		63,000	Name consultants & contract amounts
Total Engineering & Environmental Studies	0	0		118,065		118,065	

Financing Costs

Construction Financing Costs							
Construction Loan Origination Fee							
Construction Loan Interest							
Title & Recording							
CEIAC & CDAC fees							
Bond Issuance Fees							Limited to 12.5 bps due to related party. 88,875
Owner Bond Cost of Insurance							
Other Lender Costs - construction inspection							construction inspection
Sub-total Const. Financing Costs	0	0				0	
Permanent Financing Costs							
Permanent Loan Origination Fee							
Credit Enhance. & Appl. Fee							Century Housing AHP loan fee
Title & Recording							
Sub-total Perm. Financing Costs	0	0				0	
Total Financing Costs	0	0				0	

Legal Costs

Business Legal fees							
Land Use / CEQA Attorney fees							
Tax Credit Counsel							
Bond Counsel							
Construction Lender Counsel							
Permanent Lender Counsel							
Other Legal - CHIEFS w/ase Investor Counsel							
Total Legal Costs	0	0		0		0	

Other Development Costs

Appraisal							
Market Study				69,000		69,000	
Insurance						0	
Property Taxes						0	
Accounting / Audit						0	
Organizational Costs						0	
Entitlement / Permit Fees				87,604		87,604	
Marketing / Rent-up						0	
Furnishings						32,000	Unit. See MOHCD UW Guidelines on: http://mohcd.org/documents-reports-and-forms
PG&E / Utility Fees				266,774		266,774	
TCAC App / Allow / Monitor Fees						0	
Financial Consultant fees						0	
Construction Management fees / Owner's Rep				20,952		20,952	
Security during Construction						0	Urban Alchemy during construction
Relocation						0	
Other - public art						0	
Other - Predevelopment interest						0	
Other - Special Inspection/Vendor testing				22,651		22,651	
Total Other Development Costs	0	0		457,981		457,981	

Soft Cost Contingency

Contingency (Arch, Eng, Fin, Legal & Other Dev)	0			165,000		165,000	Should be either 10% or 5% of total soft costs
TOTAL SOFT COSTS	0	0		1,397,822		1,397,822	

RESERVES

Operating Reserves							
Replacement Reserves							
Tenant Improvements Reserves							
Other (specify)							
Other (specify)							
Other (specify)							
TOTAL RESERVES	0	0		0		0	

DEVELOPER COSTS

Developer Fee - Cash-out Paid at Milestones				300,000		300,000	
Developer Fee - Cash-out At Risk							
Developer Fee - GP Equity (also show as source)				0			
Developer Fee - Delisted (also show as source)							
Development Consultant Fees							Capital Campaign consultant fee and CHIEFS PM fee to PM consultant
Community Facilities Space Fee							
TOTAL DEVELOPER COSTS	0	0		300,000		300,000	

TOTAL DEVELOPMENT COST

1,618,304	1,078,870	5,000,000	3,450,690	5,000,000	16,147,864	16147864
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Development Cost/Unit as % of TDC by Source

0	0	0	0	0	0	0
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Acquisition Cost/Unit by Source

0	0	0	0	0	0	0
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Construction Cost (inc Const Contingency)/SF

9.62	6.35	29.41	10.31	29.41	85.00	
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City Subsidy/Unit

Tax Credit Equity Picking:
Construction Bond Amount:
Construction Loan Term (in months):
Construction Loan Interest Rate (as %):

**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.

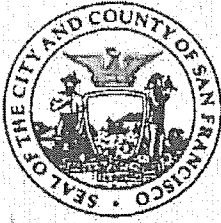
(f) The City reserves the right to require an increase in insurance coverage in the event the City determines that conditions show cause for an increase, unless Grantee demonstrates to the City's satisfaction that the increased coverage is commercially unreasonable and unavailable to Grantee.

(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.



City and County of San Francisco
Mayor's Office of Housing and Community Development
1 South Van Ness Avenue, 5th 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

Grant Agreement Packet

Agency Name: 1064 Mission Homeless Services Center LLC
Agency DUNS Number: N/A
Project ID: N/A
Project Description: Grant funding for predevelopment 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: \$775,439

Funding Source: General Fund

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

GRANT AGREEMENT
between
CITY AND COUNTY OF SAN FRANCISCO
and
1064 MISSION HOMELESS SERVICE CENTER LLC

THIS 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, Grantee understands and acknowledges that City is utilizing the City's **General Fund** 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 I
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) "Charter" shall mean the Charter of City.
- (d) "CMD" shall mean the Contract Monitoring Division of the City.

- (e) "Controller" shall mean the Controller of City.
- (f) "Effective Date" shall have the meaning set forth in Section 3.01 below.
- (g) "Event of Default" shall have the meaning set forth in Section 14.01 below.
- (h) "Fiscal Quarter" shall mean each period of three (3) calendar months commencing on July 1, October 1, January 1 and April 1, respectively.
- (i) "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.
- (j) "Form H" shall have the meaning set forth in Section 7.03(C) below.
- (k) "Funding Source" shall mean the federal, state or city program under which MOHCD/OEWD receives the funding from which this grant is made.
- (l) "Grant Amount" shall mean the total funds authorized for distribution to Grantee under this Agreement, as set forth in Section 5.01 below.
- (m) "Grant Funds" shall mean any and all funds allocated or disbursed to Grantee under this Agreement.
- (n) "Homeless Individual or Family" is defined in the ESG program regulations at 24 C.F.R. 576.2.
- (o) "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.
- (p) "Losses" shall mean any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, judgments, fees, expenses and costs of whatsoever kind and nature (including legal fees and expenses and costs of investigation, of prosecuting or defending any Loss described above) whether or not such Loss be founded or unfounded, of whatsoever kind and nature.
- (q) "MOHCD/OEWD Program" shall mean the federal, state or local funding program that MOHCD/OEWD is administering.
- (r) "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.
- (s) "Project Budget" shall mean each budget setting forth the uses of Grant Funds for a Work Program identified in Appendix A attached hereto.
- (t) "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.
- (u) "Tenure Period" shall have the meaning set forth in Section 3.03 below.
- (v) "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.
- (w) "Work Product" shall have the meaning set forth in Section 4.03 below.
- (x) "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 Source for this Agreement, as identified on the first page of this Agreement, including 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. As a result, all CDBG grants require strict compliance with the CDBG Program, all ESG grants require strict compliance with the ESG Program, all HOPWA grants require strict compliance with the HOPWA Program, and all HOME grants require strict compliance with the HOME Program. 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 August 1, 2019. Such term shall end at 11:59 p.m. San Francisco time on August 1, 2021. 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.

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 \$775,439 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 \$775,439 .

At start of construction, DPH and HSH will take out the Grant Funds with the permanent financing to build the HSC.

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. 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.

C. 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.

D. Upon certification of this Agreement by City's Controller, and upon the execution of any contract between Grantee and its contractor or lessor in accordance with Section 7.03 hereof, City may, at its option, deposit an amount commensurate with the initial payment called for in such contract into a separate account of a designated lending institution established by Grantee solely for funds provided under this Agreement.

E. After the initial advance, if any, made pursuant to Section 5.04 (E) above, Grantee shall submit disbursement requests to MOHCD/OEWD, no more frequently than monthly, together with copies of all invoices and other documents supporting the request as required by the procedures identified in the Procedures Manual. City shall have no obligation to disburse the requested amounts unless and until Grantee has provided appropriate documentation or other support, to the satisfaction of MOHCD/OEWD, that the requested disbursement complies with the requirements of this Agreement. Upon review and approval of the request, and at MOHCD/OEWD's

option, a physical inspection of the Work Program, MOHCD/OEWD will process payments to Grantee. If the disbursement request relates to amounts due pursuant to third party contracts, MOHCD/OEWD will not disburse amounts that exceed the amounts specified in the approved contract. For construction contracts, MOHCD/OEWD shall withhold a minimum of 10% of each progress payment (the "Retained Amount") pending final Work Program completion. The Retained Amount will be paid upon MOHCD/OEWD's receipt of a certified Notice of Completion, appropriate lien waivers or releases, a Request for Final Payment together with copies of all invoices and other documents supporting that request, and any other documents or instruments reasonably requested by MOHCD/OEWD. City shall have no obligation to appropriate funds, and City's obligation to make payments hereunder shall automatically terminate, without cost or liability of any kind to City, upon (i) City's payment of all amounts previously appropriated by City, or (ii) City's termination of this Agreement.

F. MOHCD/OEWD may, at its option, issue checks payable to the order of Grantee or two-party checks payable to the order of Grantee and its contractor or lessor. Grantee agrees to pay to said contractor or lessor any amounts due within five (5) business days of receipt by Grantee of payment from the City. Grantee further agrees to return any funds to the City, within five (5) business days, if Grantee chooses for any reason not to make payment of the funds to the contractor or lessor.

G. 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.

H. 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.

I. 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.

J. 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

Section 13.01 – Types and Amounts of Coverage

Without limiting Grantee's liability pursuant to Article 12, Grantee shall maintain in force, during the full term of this Agreement, insurance in the following amounts and coverages:

- (a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than one million dollars (\$1,000,000) each accident, injury, or illness. If Grantee is expected to perform services on City premises the Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Grantee, its employees, agents and subcontractors.
- (b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
- (c) Commercial Automobile Liability Insurance with limits not less than one million dollars (\$1,000,000) each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- (d) (If professionals are used as part of the Agreement) Professional Liability Insurance for negligent acts, errors or omission with respect to professional or technical services, if any, required in the performance of this Agreement with limits not less than one million dollars (\$1,000,000) each claim.
- (e) (If Grant Funds are used for the purchase or improvement of real property) Property Insurance covering all real property constructed, improved, rehabilitated or purchased in whole or in part with Grant Funds, in form appropriate for the nature of such property, covering all risks of loss, excluding earthquake and flood, for 100% of the reconstruction value (brought up to current codes), with deductible, if any, acceptable to the City, and naming the City as loss payee, as its interest may appear, except that if Grantee leases the real property that is constructed, improved or rehabilitated with Grant Funds, such coverage with respect to the leased property may be provided by the owner or landlord. Grantee shall maintain the property insurance during the full term of this Agreement and the Tenure Period, as described in Section 3.03.

Section 13.02 – Additional Requirements for General and Automobile Coverage

Commercial General Liability and Commercial Automobile Liability insurance policies shall:

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

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

Section 13.03 – Additional Requirements for All Policies

All insurance policies required to be maintained by Grantee shall be endorsed to provide thirty (30) days' prior written notice of cancellation for any reason, reduction in coverage, or intended nonrenewal to Grantee and City. Notice to City shall be mailed to the address(es) for City pursuant to Article 17. Grantee's compliance with the insurance requirements hereunder shall in no way reduce, affect or relieve Grantee's indemnification and other obligations hereunder.

In the event Grantee engages in activities not covered by the above insurance, Grantee shall procure whatever additional insurance necessary or appropriate to cover such risks. Acquisition of such insurance does not, however, assure the City's approval of such new activities.

Section 13.04 – Required Post-Expiration Coverage

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

Section 13.05 – General Annual Aggregate Limit/Inclusion of Claims Investigation or Legal Defense Costs

Should any of the insurance required hereunder be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

Section 13.06 – Evidence of Insurance

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

Section 13.07 – Effect of Approval

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

Section 13.08 – Insurance for Subcontractors and Evidence of this Insurance

If a subcontractor will be used to complete any portion of this Agreement, Grantee shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents, and employees and Grantee as additional insureds.

Section 13.09 – Bonding for Construction Contracts

Prior to the release of any of the Grant Funds for the construction or improvement of facilities, Grantee must enter into a contract with a contractor wherein Grantee shall explicitly retain an amount equal to or greater than 10% (as determined by mutual agreement between Grantee and MOHCD/OEWD) of the total construction cost until completion of the entire contract, and each progress payment during construction shall retain the required percentage of the cost of the work covered by that payment. The final payment to the contractor shall be made only following MOHCD/OEWD written approval, which approval may be withheld pending recordation of a valid notice of completion, receipt of an architect's certification of substantial completion, receipt of appropriate lien waivers or

releases, and such additional reasonable requirements as MOHCD/OEWD may determine. Prior to the release of any of the Grant Funds for the construction or improvement of facilities expected to cost between \$20,000 and \$100,000, the City may require Grantee or contractor to post a performance bond and a labor and material payment bond, in a form approved by the City, in amounts not less than 100% of the contract price for the work. For all contracts exceeding \$100,000, the contractor must provide a performance bond and a labor and material payment bond equal to 100% of the contract price for the work.

Section 13.10 – Construction Contractor’s Insurance

A. Grantee must require that the construction contractor maintain, throughout the term of the construction contract, insurance as follows:

1. Workers’ Compensation Insurance at statutory limits, including coverage for Employers’ Liability, with limits not less than one million dollars (\$1,000,000) each accident, injury, or illness. If Grantee is expected to perform services on City premises the Workers’ Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Grantee, its employees, agents and subcontractors; and
2. Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
3. Commercial Automobile Liability Insurance with limits not less than one million dollars (\$1,000,000) each occurrence, “Combined Single Limit” for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable; and
4. Builder’s All Risk Insurance for loss or damage to the work in progress for the amount of the contract.

B. Each contractor shall furnish Grantee with certificates of insurance and additional insured policy endorsements from insurers in a form acceptable to the City for the above coverage prior to the commencement of any work, and Grantee shall verify that the above insurance requirements are maintained throughout the term of the construction contract and during all construction. Each insurance policy shall name the City and its Agents as an additional insured. Upon request, Grantee shall furnish copies of such certificates of insurance and endorsements to the City. In the event the above insurance is not maintained for any reason, Grantee shall immediately cease all construction activities on the Work Program until such time as the required insurance is resumed. To the extent that any insurance proceeds are not used to rebuild the Work Program, any such proceeds shall be paid to the City to the extent of funds disbursed to Grantee under this Agreement.

Section 13.11 – Professional Liability Insurance for Construction Contracts

A. Grantee shall require, throughout the term of any contract for professional services, or, if professional services are donated, throughout the term of the construction contract to which said professional services are devoted, that such professional services contractor maintain insurance as follows:

Professional liability insurance for negligent acts, errors or omission with respect to professional or technical services, if any, required in the performance of this Agreement with limits not less than one million dollars (\$1,000,000) each claim

B. Grantee shall verify that such insurance is maintained as set forth above, and upon request, shall furnish to the City a copy of the certificate of insurance. In the event that such insurance is not maintained, Grantee shall terminate the applicable contract until such time as the required insurance is obtained or shall retain the services of some other professional service contractor that has or will obtain the requisite insurance.

**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: Or
Mayor's Office of Housing and
Community Development
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
Attn: Director
Facsimile No. 415-701-5501

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. 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 101, 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

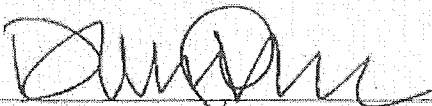
Agreement may shift from MOHCD to the new department, however the responsibilities under this Agreement shall not change. MOHCD shall notify Contractor/Grantee of the new departmental contact and invoicing procedures. At such time as notice is given, all references in this Agreement to MOHCD or the "Department" 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: 
Daniel Adams, Acting Director
Mayor's Office of Housing and Community
Development

OR

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

APPROVED AS TO FORM:

DENNIS J. HERRERA
CITY ATTORNEY

BY: 
HEIDI J. GEWERTZ
Deputy City Attorney

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

I have read and understood 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.

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

BY: 

Print Name: Jennifer Dolin

Title: Vice President

(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
\$775,439_ 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:

Funding Source	General Fund
Total Amount Granted by this Agreement	\$775,439
Amount Granted for Grant Year 2018-2019	\$775,439
Federal Award Identification Number (FAIN)	N/A
Federal Award Date	N/A
Total Amount of the Federal Award	N/A
Federal Award Project Description	N/A
Federal Awarding Agency	N/A
CFDA Number and Name	N/A
Award for R&D?	N/A
Indirect Cost Rate for the Federal Award	N/A
Negotiated Maximum Indirect Cost Rate between MOHCD/OEWD and Agency	N/A

[WORK PROGRAM AND PROJECT BUDGET FOLLOWS THIS PAGE]

Work Program

The grant will fund predevelopment 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. Predevelopment funds will be utilized by the Grantee to develop the HSC on behalf of DPH and HSH, as described through the Developer Services Agreement. Predevelopment funds are being work ordered by DPH to MOHCD for loan disbursement.

Predevelopment Budget for the HSC:

SOURCES

Name of Sources:

775,439

HSH

DPH

PREDEV SOFT COSTS

Architecture & Design

Architect design fees	192,000
Design Subconsultants to the Architect (incl. Fees)	240,816
Architect Construction Admin	
Reimbursables	10,000
Additional Services	
<i>Sub-total Architect Contract</i>	<i>442,816</i>
Other Third Party design consultants (not included under Architect contract)	20,000
Total Architecture & Design	462,816

Engineering & Environmental Studies

Survey	30,513
Geotechnical studies	23,601
Phase I & II Reports	10,333
CEQA / Environmental Review consultants	
NEPA / 106 Review	
CNA/PNA (rehab only)	
Other environmental consultants	12,500
Total Engineering & Environmental Studies	76,947

Other Development Costs

Appraisal	
Market Study	
Insurance	
Property Taxes	
Accounting / Audit	
Organizational Costs	
Entitlement / Permit Fees	90,000
Marketing / Rent-up	
Furnishings	
PGE / Utility Fees	
TCAC App / Alloc / Monitor Fees	
Financial Consultant fees	
Construction Management fees / Owner's Rep	6,000

Security during Construction	
Relocation	
Other - School Fees	1,000
Other - Public Art	
Other - Predevelopment Interest	

Total Other Development Costs 97,000

Soft Cost Contingency

Contingency (Arch, Eng, Fin, Legal & Other Dev)	63,676
TOTAL SOFT COSTS	700,439

DEVELOPER

Developer Fee - Cash-out Paid at Milestones	75,000
TOTAL DEVELOPER COSTS	75,000

TOTAL DEV COST

775,439

Appendix B—Interests In Other City Contracts
2018-19

City Department or Commission	Date of Contract	Amount of Contract
None		

LEASE

THIS LEASE, made this 1st day of November, 2018, between the United States of America, acting through the Secretary of Health and Human Services, by the Program Manager, Real Property Management Services, Program Support Center, U.S. Department of Health and Human Services (hereinafter referred to as "Lessor"), under and pursuant to the power and authority delegated by the 40 U.S.C. §550, as amended (hereinafter referred to as "the Act"), and regulations promulgated pursuant thereto at 45 C.F.R. Part 12, and Title V of the McKinney-Vento Homeless Assistance Act (42 U.S.C. §11411), as amended, and regulations promulgated thereto at 45 C.F.R. Part 12a, and the City and County of San Francisco (hereinafter, including its successors or assigns, called the Lessee).

WITNESSETH

WHEREAS, the Lessee has made application for the transfer, by lease, of certain surplus real property consisting of two parcels of land, totaling 1.2 acres, more or less, (hereinafter called the Property), for homeless assistance purposes; and

WHEREAS, the Lessor has determined that said Property is needed and is usable by the Lessee for said purposes and has requested the assignment of the Property for transfer to the Lessee; and

WHEREAS, by letter dated April 26, 2018, the Administrator of General Services has assigned the Property to the Lessor for homeless assistance purposes.

NOW, THEREFORE, the Lessor, for and in consideration of the foregoing and of the observance and performance by the Lessee of the covenants, conditions and restrictions hereinafter contained, hereby leases to the Lessee for a period of 3 years beginning this 1st day of November, 2018, renewable with mutual consent for a total lease term not to exceed twenty years, the Property, situate, lying, and being in the City and County of San Francisco, State of California, and more particularly described as follows:

PARCEL I:

BEGINNING at a point on the northwesterly line of Mission Street, distant thereon 325 feet northeasterly from the northeasterly line of 7th Street; running thence northeasterly along said line of Mission Street 25 feet; thence at a right angle northwesterly 85 feet; thence at a right angle southwesterly 25 feet; thence at a right angle southeasterly 85 feet to the point of beginning.

BEING part of 100 VARA BLOCK NO. 393.

PARCEL II:

BEGINNING at a point on the southeasterly line of Stevenson Street, distant thereon 350 feet southwesterly from the southwesterly line of 6th Street; running thence

southwesterly along said line of Stevenson Street 150 feet; thence at a right angle southeasterly 265 feet; thence at a right angle northeasterly 25 feet; thence at a right angle southeasterly 85 feet to the northwesterly line of Mission Street; thence at a right angle northeasterly along said line of Mission Street 125 feet; thence at a right angle northwesterly 200 feet to the former northwesterly line of Jessie Street, as said Jessie Street existed prior to closing of a portion thereof; thence at a right angle southwesterly along said former northwesterly line of Jessie Street, as it existed prior to the closing of a portion thereof 25 feet; thence at a right angle northwesterly 75 feet; thence at a right angle northeasterly 25 feet; thence at a right angle northwesterly 75 feet to the point of beginning.

BEING a part of 100 Vara Block 393 and a portion of Jessie Street, as it existed prior to closing of a portion thereof.

The Lessee, by acceptance of this Lease, covenants and agrees for itself, its successors and assigns, that the Property is transferred on an "as is, where is," basis, without warranty of any kind, either expressed or implied, including as to the condition of the Property. The Lessee also covenants and agrees for itself, its successors and assigns, that the Lessor has no obligation to provide any additions, improvements, or alterations to the Property.

TO HAVE AND TO HOLD the Property, subject, however, to each of the following conditions subsequent, which shall be binding upon and enforceable against the Lessee, its successors and assigns, as follows:

1. For the period of this lease or any renewal thereof, the Property herein conveyed shall be used continuously for homeless assistance purposes in accordance with the proposed program and plan of the Lessee as set forth in its application to lease dated May 31, 2017 and subsequently amended June 23, 2017 and July 27, 2017 and for no other purpose except such as may be agreed to in writing by the Lessor.
2. The Lessee will not sublease any part of the Property or any interest therein except as the Lessor may authorize in writing. Nor will Lessee permit any person or entity to use any part of the Property or any interest therein except as the Lessor may authorize in writing.
3. Where construction or major renovation is not required or proposed the Property must be placed into use within twelve (12) months from the date of this lease. Where construction or major renovation is contemplated at the time of transfer, the Property must be placed into use within thirty-six (36) months from the date of this lease. Lessee, is required to fully occupy and secure the property as of the date of this lease.
4. One year from the date of this lease and annually thereafter for the period of this lease and any renewal thereof, the

Lessee will file with the Lessor a report on the operation and maintenance of the Property and will furnish, as requested by the Lessor, such pertinent data evidencing continuous use of the Property solely for the authorized purpose.

5. During the period of this lease and any renewal thereof, the Lessee will at all times remain a tax-supported or a private nonprofit organization.
6. That, for the period during which the Property is used for the purpose for which the Federal assistance is hereby extended by the Lessor or for another purpose involving the provision of similar services or benefits, the Lessee hereby agrees that it will comply with the requirements of section 606 of the Act (40 U.S.C. § 476); the Fair Housing Act (42 U.S.C. § 3601-19) and implementing regulations; and as applicable, Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations; Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d to d-4) (Nondiscrimination in Federal Assisted Programs) and implementing regulations; Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) and implementing regulations; and the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. § 6101-07) and implementing regulations; and the prohibitions against otherwise qualified individuals with handicaps under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) and implementing regulations, and all requirements imposed by or pursuant to the Regulations of the Lessor (45 CFR Parts 12, 12a, 80, 84, and 91) issued pursuant to said Acts and now in effect, to the end that, in accordance with said Acts and Regulations, no person in the United States shall, on the ground of race, color, national origin, sex, age, or handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under the program and plan referred to in condition numbered 1 above.
7. Lessee covenants and agrees that the Property will be used for secular purposes, with no more than a de minimis level of other activity.
8. Lessee covenants and agrees that the Property will be used for homeless assistance purposes throughout the duration of the lease. However, in the event Lessee proposes to use any part of the Property for a nonconforming use, and Lessor approves that nonconforming use in writing, Lessee shall pay Fair Market Rent (FMR) for that portion of the Property.

The Administrator of General Services has determined that current Fair Market Rent for the entire Property is \$41,000 per month. The actual rental

payment will be determined should the Lessee's nonconforming use proposal be approved. Upon execution of a written agreement memorializing the terms of that approval, the initial prorated payment shall be made within thirty (30) calendar days. All subsequent rental payments for the period of nonconforming use shall be made on or before the first day of each month, in such a manner as may be specified by Lessor. Lessor reserves the right to cancel its approval of the nonconforming use upon thirty (30) days written notice.

9. Lessee covenants and agrees that the leasehold interest will not be used as collateral unless prior approval, in writing, is obtained from the Lessor. Lessee further covenants and agrees that it will promptly pay all costs associated with its use of the Property including, but not limited to, maintenance and utilities costs, taxes, assessments, etc. and that it will not cause, either by action or inaction, any liens or other potential encumbrances on title to the Property.

In the event of a breach of any of the conditions subsequent set forth above, or in the event of a breach of any other terms or conditions of this lease, whether caused by legal or other inability of the Lessee to perform any of such terms and conditions as herein set forth, the Lessor will, at its option, have an immediate right of reentry thereon, and to terminate this lease.

The failure of the Lessor to insist, in any one or more instances, upon performance of any of the terms, conditions, or covenants of this lease, shall not be construed as a waiver or relinquishment of the Lessor's right to the future performance of any such terms, conditions, or covenants, and Lessee's obligations with respect to such future performance shall continue in full force and effect.

Lessee, at its own expense, shall so protect, preserve, maintain, and repair the leased property that the same will at all times be kept in as good a condition as when received hereunder; subject, however, to ordinary wear and tear and loss or damage for which the Lessee is not liable hereunder.

During the period of this lease or any renewal thereof, Lessee shall have the right to install such of its own machinery and equipment to make such (minor) improvements and additions and to attach such removable fixtures in or upon the leased premises as may be necessary for its use of the leased property pursuant to this lease and in accordance with program(s) of use set forth in its application to lease dated the May 31, 2017 and subsequently amended June 23, 2017 and July 27, 2017 and the further right to remove same at any time prior to the expiration of this lease or any renewal thereof; PROVIDED, that in the event of termination of this lease or any renewal thereof upon less than thirty days notice, Lessee may remove such items within thirty days from the receipt of notice of termination. All property not so removed shall be deemed abandoned by the Lessee and may be used or disposed of by the Government in any manner whatsoever without liability to account to the Lessee therefor, but such abandonment shall in no way reduce any obligation of the Lessee for restoration under the terms of this lease.

It is expressly understood and agreed that Lessee will make no substantial alterations, additions, or betterments to, or installations upon, the leased property except those set forth in the application to lease dated the May 31, 2017 and subsequently amended June 23, 2017 and July 27, 2017 as being necessary to carry out the proposed public health program of use set forth or described in said application and which have received the prior approval of the Lessor; and then, only subject to the terms and conditions of such approval, which may include an obligation of removal and restoration upon the expiration or termination of this lease, including any extension or renewal thereof. Except insofar as said terms and conditions may expressly provide otherwise, all such alterations, additions, betterments, or installations made by the Lessee shall become the property of the Lessor when annexed to the leased property or any part thereof. Parties acknowledge that the Property is in the Area of Potential Effect for the neighboring historic James R. Browning Courthouse. Any proposed alteration must be in compliance with the National Historic Preservation Act and its implementing regulations.

Lessee shall bear all risk of loss of or damage to the leased Property arising from any cause whatsoever, with or without fault of the Lessee; provided, however, that Lessee's liability for any loss or damage from risks expressly required to be insured against under the lease shall not exceed the amount of insurance so required or the amount actually procured and maintained, whichever shall be the greater; provided further that the maintenance of the required insurance shall effect no limitation on Lessee's liability with respect to any loss or damage resulting from the willful misconduct, lack of good faith, or negligence of the Lessee or any of its officers, agents, servants, employees, subtenants, licensees, or invitees.

The Lessor acknowledges that, for such period as the Lessee is in possession of the leased Property pursuant to the terms and conditions of this lease or any renewal thereof, the Lessee is a self-insured municipal entity. There will be no insurance proceeds in event of loss. Nothing herein shall be construed as an obligation upon the Lessor to repair, restore, or replace the leased Property or any part thereof.

The Lessee covenants that it will indemnify and save and keep harmless, the United States of America, its officers, agents, and employees against any and all loss, cost damage, claim, expense or liability whatsoever due to personal injury or death or damage to property of others directly or indirectly arising out of the condition, state of repair, or the use or operation of the Property, including all acts or omissions of its officers, agents, servants, employees, subtenants, licensees, or invitees in the use or occupancy of the Property.

The Lessee, its successor or assigns, shall be solely liable for all costs relating to any damage to the property, personal injury, illness, disability or death, of the Lessee, or the Lessee's successors, assigns, employees, invitees, or any other person, including members of the general public, arising from or incident to the purchase, transportation, handling, storage, use, release, or disposal, or other activity causing or leading to contact of any kind whatsoever with hazardous or toxic substances, during use of the property by said Lessee, its successors or assigns.

The lease is subject to all outstanding easements and rights-of-way for the location of any type of facility or system in, on, under, over, across, or upon the leased Property or any portion thereof, and to the right of the Lessor to grant such additional easements or rights-of-way, in, on, under, over, across, or upon the leased Property as it may be determined to be in

the public interest; PROVIDED that any such additional easement or right-of-way shall be conditioned upon the assumption by the Lessee thereof of liability to the Lessee for such damages as Lessee shall suffer for property destroyed or property rendered unusable on account of Lessee's exercise of its rights thereunder. There is hereby reserved to the holders of such easements and rights-of-way as are presently outstanding or which may hereafter be granted; to any persons officially engaged in the construction, operation, repair, or replacement of facilities or systems located thereon; and to any Federal, State, or local officials engaged in the official inspection thereof, such reasonable rights of ingress and egress over the leased Property as shall be necessary for the performance of their duties with regard to such facilities or systems.

During the period of this lease or any renewal thereof, the Lessor shall have access to the leased Property at all reasonable times for any purposes not inconsistent with the quiet use and enjoyment thereof by the Lessee, including, but not limited to, the purpose of inspection.

This lease may be renewed by mutual agreement upon written application by the Lessee, at least sixty days before the end of the period of this lease or any renewal thereof.

The Lessee, by acceptance of this lease, covenants and agrees for itself, its successors and assigns that, upon the expiration of this lease, any extension thereof or the prior termination of this lease or extension thereof by either party, Lessee shall quietly and peacefully remove itself and its property from the leased Property and surrender possession thereof to the Lessor; Provided, in the event the Lessor shall terminate this lease upon less than thirty days notice, Lessee shall be allowed a reasonable period of time, as determined by the Lessor, but in no event to exceed thirty days from the receipt of notice of termination, in which to remove all of its property from and terminate its operations on the leased Property. During such period prior to surrender, all obligations of the Lessee under this lease shall remain in full force and effect, and the Lessee will continue to provide protection and maintenance of the leased Property until such time as actual possession is taken by the Lessor, including the period of any notice of cancellation. Such protection and maintenance shall, at a minimum, conform to the standards prescribed by the General Services Administration in its regulations, FMR (41 CFR §102-75.965-98) in effect as of the date of this lease and a copy of which is attached hereto and made a part hereof as Exhibit "A."

The Lessee shall comply with all applicable Federal, State, municipal, and local laws, rules, orders, ordinances and regulations, except for local zoning regulations, in the occupation, use, and operation of the Property.

No member of or delegate to the Congress or resident Commissioner shall be admitted to any share or part of this lease contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the contract of lease if made with a Corporation for its general benefit.

The Lessee warrants that it has not employed or retained any person or agency to solicit or secure this contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee excepting bona fide employees or bona fide commercial agencies maintained by the Lessee for the purpose of securing business. Breach or violation of this warranty shall give the Lessor the right to annul the contract without

liability or, in its discretion, to recover from the Lessee the amount of such commission, percentage, brokerage, or contingent fee in addition to the consideration herein set forth, if any.

The Lessee is hereby informed and does acknowledge that the building on the Property and existing on the date of this lease was constructed prior to 1978 and, as with all such Property, a lead-based paint hazard may be present. The Lessee shall not permit the use of any such structures for residential habitation unless the Lessee has eliminated the hazards of lead-based paint by treating any defective lead-based paint surface in accordance with all applicable laws and regulations. According to the Consumer Product Safety Commission and the President's Council of Environmental Quality, lead is a special hazard to small children. The Property is being sold "as is" and the Lessee shall be responsible for any and all liabilities, damages, loss, expenses or judgments arising out of or related to health problems which are the result or exposure to lead-based paint where the exposure occurred after the Property was conveyed to the Lessee.

Asbestos containing materials (ACM) are present in the building. Lessee covenants and agrees, on behalf of themselves, their successors and assigns, that in their use and occupancy of the Property, or any part thereof, they will comply with all Federal, state and local laws relating to asbestos. Lessor assumes no liability for damages for personal injury, illness, disability or death, to the Lessee, or the Lessee's successors, assigns employees, invitees, or to any other person subject to the control or direction of Lessee, its successors or assigns, or to any person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kid whatsoever with asbestos on the Property described in this lease, whether the Lessee, its successors or assigns has or have properly warned or failed to properly warn the individual(s) injured. GSA Fire Safety & Environmental Survey Report dated January 18, 1995 is available to Lessee.

The Lessee is notified that the United States has determined that a radon hazard potentially exists in subject building(s) on the Property and from the Property itself. Results of previous studies performed by the United States are available to the Lessee. Radon is a naturally occurring radioactive gas emanating from the ground that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time, and which falls with the CERCLA "Limitations on Response" standards at 42 U.S.C. 9604 (a)(3). Additional information regarding radon and radon testing may be obtained from the EPA and county and state health units.

Information provided to the Lessee with respect to the Property is based on the best information available to the U.S. General Services Administration and is believed to be correct, but any error or omission, including but not limited to the omission of any information available to the agency having custody over the Property and/or any other Federal agency, will not constitute grounds for liability for damages by the Government for personal injury, illness, disability, or death, to the Lessee, its successors, assigns, employees, invitees, or any other person subject to the Lessee's control or direction.

Lessee covenants and agrees, on behalf of themselves, their successors and assigns, that in their use and occupancy of the Property, or any part thereof, they are responsible for compliance with all Federal, state and local laws relating to PCB and mercury; and that, by

virtue of this lease, Lessor assumes no liability for damages for personal injury, illness, disability or death, to the Lessee, or to Lessee's successors, assigns, employees, invitees, or to any other person subject to the control or direction of Lessee, its successors or assigns, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with PCB and mercury on the Property described in this lease, whether the Lessee, its successors or assigns has or have properly warned or failed properly to warn the individual(s) injured.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date first above written.

UNITED STATES OF AMERICA
Acting by and through the Secretary
of Health and Human Services

By: _____

Theresa Ritta, Program Manager
Federal Real Property Assistance Program
Real Property Management Services
Program Support Center

ACCEPTED:

LESSEE: City and County of San Francisco

By: _____

Andrico Q. Penick, Director of Real Estate

Date: _____

10/31/18

APPROVED AS TO FORM:
CITY ATTORNEY

By: Heidi Gewertz, Deputy City Attorney

Date: _____

10/31/18

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of the document.

State of California)
County of San Francisco)

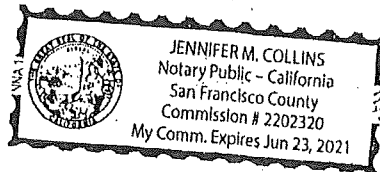
On November 1, 2018, before me, Jennifer M. Collins, Notary Public, personally appeared Andrico Q Penick, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

Jennifer M. Collins



(Seal)

virtue of this lease, Lessor assumes no liability for damages for personal injury, illness, disability or death, to the Lessee, or to Lessee's successors, assigns, employees, invitees, or to any other person subject to the control or direction of Lessee, its successors or assigns, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with PCB and mercury on the Property described in this lease, whether the Lessee, its successors or assigns has or have properly warned or failed properly to warn the individual(s) injured.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date first above written.

UNITED STATES OF AMERICA
Acting by and through the Secretary
of Health and Human Services

By: Theresa Ritta
Theresa Ritta, Program Manager
Federal Real Property Assistance Program
Real Property Management Services
Program Support Center

ACCEPTED:

LESSEE: City and County of San Francisco

By: _____
Andrico Q. Penick, Director of Real Estate

Date: _____

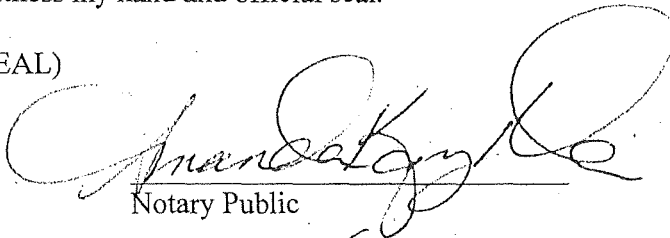
ACKNOWLEDGMENT

STATE OF MARYLAND)
COUNTY OF FREDERICK) SS

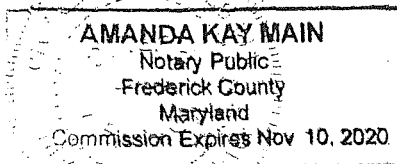
On this 1st day of November 2018, before me the undersigned officer, personally appeared Theresa Ritta, known to me to be the Program Manager, Real Property Management Services, Program Support Center, Department of Health and Human Services, and known to me to be the person who executed the foregoing instrument on behalf of the Secretary of Health and Human Services, for the United States of America, and acknowledged to me that she subscribed to the said instrument in the name of the Secretary of Health and Human Services and on behalf of the United States of America.

Witness my hand and official seal.

(SEAL)


Notary Public

My commission expires Nov 10 2020



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Request For Qualifications

For the development of new supportive housing at:

1064-1068 Mission Street

(Assessor's Parcels: Block 3703, Lot 040 and Block 3703, Lot 084)

Issued: October 10, 2017 by: Anne Romero

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

Responses due by 5:00 pm on November 13, 2017

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ATTACHMENTS

Attachment 1 - Map of site

Attachment 2 - RFQ Registration Form

Attachment 3 - Respondent Description

Attachment 4 - Projected Staffing Workload

Attachment 5 - Service Provider Residential Experience

Attachment 6 - Disclosures

I. INTRODUCTION

The City and County of San Francisco (the “City”), acting through the Mayor's Office of Housing and Community Development (“MOHCD”), is seeking a qualified developer to work with the City (the “Selected Developer”), to develop supportive housing and ground floor community-serving space on parcels that will be owned by the City (the “Project”). The parcels, 1064-1068 Mission Street (the “Site”), are adjacent to the James R. Browning Courthouse at the corner of 7th and Mission Street, which is to the west of the Site. Immediately to the east is 1036 Mission Street, an affordable housing development that is currently under construction.

The Site consists of 2 parcels:

- 1064 Mission Street - Block 3703, Lot 084, is comprised of 48,719 square feet (approximately 1.12 acres) and is currently being used as an improved 175 space parking lot with frontage on Stevenson Street and the terminus of Jessie Street alley.
- 1068 Mission Street - Block 3703, Lot 040, is comprised of 2,125 square feet and is improved with a two-story plus mezzanine and basement, reinforced concrete structure built in 1913.

A map showing the location and configuration of the Site is attached as **Attachment 1**.

Disposition of both parcels is described further in this Request for Qualifications.

The intent of this Request for Qualifications (“RFQ”) is to select a single corporate entity or partnership whose function will be to create a development proposal for the Site, and to carry out that proposal through community outreach, planning, design, financing, construction, ownership, and operation of the development. This RFQ describes the general type of development sought by the City on the Site, the process to transfer a leasehold interest in the Site to the developer, the criteria that will be used to select a developer, and the submission requirements for those responding to this request.

This RFQ further describes the unique nature of the City’s acquisition of and responsibilities for the Site. Through the U.S. Department of Housing and Urban Development’s Federal Property Assistance Program (FPAP), which allows transfers to local governments and non-profits for homeless housing and services, the City is able to offer this permanent supportive housing opportunity subject to specific development schedule restrictions. To meet the FPAP time constraints, the City will require the Selected Developer to utilize modular construction technologies that can provide efficient and accelerated delivery of the housing.

Respondents to this RFQ must be comprised of the following: a non-profit developer with experience developing affordable permanent supportive housing in San Francisco or a for-profit developer working in partnership with a nonprofit developer, of which one of the joint venture partners must have experience developing affordable permanent supportive housing in San Francisco (the “Developer”); a property manager with experience serving the target population; a qualified supportive service provider with experience serving the target population; and an architect with experience designing affordable housing and conducting a community design

process. The development team must have demonstrated experience conducting effective community outreach and engagement. Furthermore, at least one entity of the development team must have experience successfully designing and/or constructing modular residential buildings. Such experience may be held by Owner/Developer, Architect, or other consultants (i.e. Construction Manager, associate Architect, etc.). All members of the Respondent will be evaluated according to the criteria set forth below, including experience with comparable projects, capacity, and the ability to deliver and maintain an excellent Project.

In addition to fulfillment of the goals and requirements of the FPAP, this RFQ and the City's plans for the Site reflect the City's priorities for the development of affordable housing for homeless adults and seniors described in MOHCD's Consolidated Plan (2015), San Francisco's Local Homeless Coordinating Board's Strategic Plan Framework (2014-2019), and the Department of Homelessness and Supportive Housing's Five Year Strategic Framework (2017). After the City's acquisition from the federal government, MOHCD is proposing to transfer the Site (subject to final approval by the Board of Supervisors) to a qualified developer for this purpose through a long-term ground lease, as further described in this RFQ.

As a condition of disposition from the federal government, the proposed permanent supportive housing must be operational within 3 years (36 months) of a fully executed Grant Deed between the City and the U.S. Department of Health and Human Services. As part of the Qualifications submission, respondent should demonstrate their ability to meet this timeline.

Development Program Objectives:

a) HOUSING:

- To provide two permanent supportive housing structures containing up to 250 units for formerly homeless adults and seniors.
- Building "A" would face Mission Street and provide approximately 150 units for formerly homeless adults.
- Building "B" would face Stevenson Alley and provide approximately 100 units for formerly homeless seniors age 62 and older.
- MOHCD and partner agency, Department of Homelessness and Supportive Housing (HSH), intend to target this housing to chronically homeless persons who are prioritized utilizing the newly developed Coordinated Entry System (CES).
- Up to one half of the units would include proposed financing from the State of California No Place Like Home (NPLH) program which targets adults with serious mental illness who are chronically homeless.
- The buildings are to take advantage of modular construction and related technologies to construct the buildings with the explicit goals of reducing construction costs and shortening the development timeline.

b) COMMUNITY BENEFITS:

- To the extent feasible, establish open space fronting Mission Street that is open to the public for some portion of the day.
- Utilize the City's First Source Hiring Program and its ties to community-based organizations to fill the project's permanent jobs with qualified local residents.

Hard copy and electronic responses to this RFQ must be received by the Mayor's Office of Housing and Community Development no later than 5:00 p.m., November 13, 2017. Facsimile responses will not be accepted.

II. IMPORTANT DATES AND SUBMISSION PROCESS

A. IMPORTANT DATES

RFQ available on MOHCD website	October 10, 2017
Pre-submission conference at MOHCD	October 19, 2017
Deadline for questions and requests for additional information	October 27, 2017
Deadline for submitting qualifications	November 13, 2017
Notification to developer teams who failed to meet submission requirements	November 20, 2017
Developer team interviews, if necessary	Week of November 27, 2017 or December 4, 2017
Staff recommendation to MOHCD Director	Week of December 11, 2017
Notification to developer teams	December 31, 2017

B. PRE-SUBMISSION MEETING

A pre-submission conference will be held at MOHCD, located at 1 South Van Ness Avenue, 5th Floor, San Francisco, on October 19, 2017 at 1:30 p.m. The purpose of the meeting is to ensure that interested developers understand the programmatic design, anticipated financing and target population requirements. Questions raised at the conference may be answered verbally at that time. If any substantive new information is provided in response to questions raised at the pre-submission conference, MOHCD will issue a written addendum to the RFQ with this information to all parties that have registered for the RFQ. No questions or requests for interpretation will be accepted after October 27, 2017 at 12:00 p.m. Attendance at the pre-submission conference is not mandatory but is highly recommended. Please see below regarding **Attachment 2**, RFQ Registration Form.

C. REGISTRATION FOR RFQ REQUIRED

In order to receive MOHCD's responses to requests for additional information and to questions about this RFQ and to submit a qualification submission, all interested parties must submit a completed RFQ Registration Form to MOHCD. The form is included with the RFQ as **Attachment 2**.

D. QUESTIONS AND REQUESTS FOR INFORMATION

All questions and requests for additional information regarding this RFQ must be received in writing by MOHCD, by hand, overnight delivery, mail, fax, or e-mail by October 27, 2017, at 12:00 p.m. Questions received after the deadline will not be answered. All addenda, responses and additional information will be distributed to all parties who have submitted a registration form in accordance with Section IIC above. MOHCD reserves the sole right to determine the timing and content of the response, if any, to all questions and requests for additional information.

E. CONTACT PERSON, SUBMISSION DEADLINE AND PLACE

All communications about this RFQ should be directed to Anne Romero, Senior Project Manager, at (415) 701-5525, Fax (415) 701-5501, anne.romero@sfgov.org, or at the address below.

Respondents to this RFQ must submit one (1) hard original plus five (5) hard copies of their proposals, as well as one electronic copy on a flash drive, or Dropbox link, to the MOHCD receptionist no later than:

5:00 p.m. on Monday, November 13, 2017

at

**Mayor's Office of Housing and Community Development
1 South Van Ness Avenue, 5th Floor
San Francisco, California 94103
Attn: Deputy Director of Housing Development**

III. SELECTION PROCESS, ELIGIBILITY AND SUBMISSION REQUIREMENTS

A. SELECTION PROCESS

MOHCD staff will review all submittals for completeness and satisfaction of minimum experience and capacity requirements.

A Selection Panel will be appointed by the Director of the Mayor's Office of Housing and Community Development composed of persons with expertise in the areas of development, affordable housing financing, property management and resident supportive services, at least one of which will represent the surrounding community. Additionally, a member of the Arts Commission Design Review Committee may be appointed. The Selection Panel will interview the top-scoring Respondents, at which time Respondents will be asked to present and explain the major characteristics of their qualifications, particularly as they relate to the Scoring Criteria, and respond to questions from the Selection Panel. After all interviews have been completed, the Selection Panel will meet to determine the final ranking of all responses and present this ranking to the Director.

The Selection Panel's scoring of each proposal will be done by consensus and will be final.

The MOHCD Director will then select a development team, and MOHCD will exclusively negotiate ground leases for the Site in accordance with the terms of this RFQ. Interested parties may only object to the development team selected according to the process set forth in Section VI(D).

B. ELIGIBILITY AND MINIMUM REQUIREMENTS

1. Development Team Overview Minimum Requirements:

Non-profit or for-profit housing development corporations and partnerships in which a non-profit or for-profit developer is the managing general partner are eligible for selection under this RFQ. Applicants must have previous affordable housing development experience in San Francisco in order to be considered under this RFQ. The proposed Development Team must include:

- At least one community-based non-profit development entity as sole developer or joint-venture partner, defined as a nonprofit organization whose mission includes the development of affordable housing in low income communities, with experience developing housing for formerly homeless adults and/or formerly homeless seniors in San Francisco;
- A lead architectural firm with experience in design and construction of affordable housing in San Francisco, preferably with experience designing supportive housing for formerly homeless, or other populations with special needs;
- A property management entity with experience managing housing for formerly homeless adults and/or formerly homeless seniors, preferably in San Francisco;

- A community-based, service-providing entity with experience providing culturally competent services appropriate for formerly homeless adults and formerly homeless seniors in a supportive housing context and experience billing to Medi-Cal;
- At least one entity of the development team must have experience successfully designing and/or constructing modular residential buildings. Such experience may be held by Owner/Developer, Architect, or other consultants (i.e. Construction Manager, associate Architect, etc.) identified as part of the Development Team.

Letters of Intent or Memoranda of Understanding from service providers and property management entities that are not affiliated with the developer must be submitted with the application.

2. Team Member Specific Minimum Requirements

- a. **Minimum Developer Requirements** - Lead Developer itself or in partnership with other co-developers must provide evidence of the following experience:
 - New construction of at least two affordable housing developments that are both high-density infill sites, with an aggregate unit count of approximately 150 units or more
 - Development of at least one supportive affordable housing development for formerly homeless adults and/or formerly homeless seniors (may be new construction or substantial rehabilitation of an existing building)
 - Use of Low Income Housing Tax Credit financing

For joint-venture Development partners, the experience of either entity may suffice for the joint-venture partnership. A Memorandum of Understanding between joint-venture Development partners must be submitted with the application.

Furthermore, a Respondent can qualify for development experience by contracting with a development consultant for comprehensive project management services. Project management services should include financial packaging, selection of other consultants, selection of construction contractor and property management agent, oversight of architectural design, construction management, and consultation on major aspects of the development process. The contract for development services must be submitted with the RFQ response and must be acceptable to MOHCD.

- b. **Minimum Ownership Experience** - The proposed Owner of the Project must have owned at least one supportive formerly homeless project in San Francisco for at least 5 years prior to the Submittal Deadline of this RFQ. In addition, the Owners must each provide evidence of experience with owning housing financed with Low Income Housing Tax credits. This experience does not have to be on the same project that satisfies the 5-year ownership requirement. If the Selected Developer entity is not the same entity as the proposed Owner, MOHCD reserves the right to require that certain members of the

Selected Developer remain active in the ownership for whatever length of time MOHCD deems necessary to ensure operating and financial stability.

For purposes of this requirement, the managing general partner of the tax credit partnership intended to take ownership of the completed Project and to provide asset management for the Project is the proposed "Owner".

- c. **Minimum Architect Requirements** - The proposed Lead Architectural firm must provide evidence of experience with the design and construction of at least one new construction high-density residential or mixed-use residential/commercial development. In addition, the architectural team must provide evidence of experience working in San Francisco, and experience designing affordable housing. Preferably the Architect will have demonstrable experience in the design of supportive housing for formerly homeless or other special needs population.
- d. **Minimum Property Manager Requirements** - The proposed property manager for the Project must have managed at least three supportive formerly homeless or supportive senior rental projects, including at least one in San Francisco, each for at least 36 months. In addition, the Property Manager for the Project must provide evidence of experience with managing housing financed with Low Income Housing Tax credits.
- e. **Minimum Service Provision Requirements** - The proposed service provider(s) must have at least 36 months' experience providing supportive services to formerly homeless adults and/or formerly homeless seniors including case management and comprehensive services for homeless households in a residential setting in San Francisco. The proposed service provider(s) must have the infrastructure to supervise and train the onsite staff and their supervisors. The service provider must also have experience with and capacity to bill Medi-Cal.
- f. **Other Consultants** – For any Respondent team, the experience of key staff members or "other consultants" may be substituted for the experience of the organization as a whole as long as the staff member's or consultant's experience in other firms was substantive and involved responsibilities similar to what they are anticipated to perform as a member of the Respondent's team. Furthermore, respondent development teams must include at least one or more team member(s) with experience successfully designing and/or constructing modular residential buildings. Such experience may be held by Owner/Developer, Architect, or other consultants (i.e. Construction Manager, associate Architect, etc.) identified as part of the Development Team.

C. SUBMISSION REQUIREMENTS

Respondents must document their experience and capacity to successfully plan, design, and develop the proposed Project, manage the property efficiently once completed, and provide services appropriate to the resident population. This documentation should include narrative with examples of relevant completed projects, as well as description of the experience and

capacity of key staff, their workloads, and the organizational structure for supporting staff. In addition, Respondents must complete and submit RFQ Attachments 2 – 6.

a. **Developer**

Describe Developer(s) experience in each of the following areas (project examples may serve to demonstrate experience in more than one area):

- New construction of affordable housing in San Francisco
- Development of supportive affordable housing for formerly homeless adults and/or formerly homeless seniors (may be new construction or substantial rehabilitation of an existing building)
- Experience as lead organizer of collaborative community outreach and planning effort for development of supportive and/or affordable housing
- Description of demonstrated capacity to complete complex urban infill projects within established budget parameters and within constrained timeframes.
- Detailed description of complex financing structures that the respondent successfully secured, including terms of the financing and number of applications required to secure financing

Respondents should provide sufficient examples of completed projects to meet the minimum qualifications described above, and are encouraged to provide additional examples that communicate depth of experience relevant to the proposed Project. However, for scoring purposes under this RFQ, a maximum of six (6) projects will be considered.

Finally, respondent developers should summarize the organizational structure of each Project Development Team member, including the roles of Developer, Co-Developer and Development Consultant, as appropriate. Identify and briefly describe the experience of key development staff. Provide an **Attachment 4 - Projected Staffing Workload** for the Project.

b. **Owner**

Describe ownership experience of permanent supportive housing developments for formerly homeless adults or seniors owned for at least five (5) years by the organization that will assume ownership of the proposed Project, including its location, non-residential uses, number of units, completion dates, capital financing and target population.

Describe the current asset management structure, staffing, and portfolio of the proposed owner, and its capacity for assuming asset management of an expanded portfolio once development is complete.

c. **Architect**

Provide a narrative and project description of not more than six (6) representative projects that demonstrate the Architect's capacity to develop affordable housing in San Francisco, complete projects on tight infill sites, and serve populations with special needs. Representative projects should be chosen that most reflect the site context, program, and target population of the proposed Project under this RFQ.

Respondents should highlight experience participating in collaborative community outreach and planning efforts related to affordable housing design and development.

d. **Property Manager**

Describe experience of property management team, including previous work with permanent supportive housing for the homeless. The preferred Respondent will include a property management company that has demonstrated successful approaches to managing buildings with formerly homeless households, including utilization of a low-barrier tenant selection process and implementation of policies and practices to prevent evictions and to facilitate the implementation of reasonable accommodation policies. Respondents should provide sufficient examples of completed projects to meet the minimum qualifications described above, and are encouraged to provide additional examples that communicate depth of experience relevant to the proposed Project. Property descriptions should include the following:

- List the total number of buildings in the property management company's portfolio and the number of years each building has been successfully managed. Identify which buildings are permanent supportive housing or have a permanent supportive housing component.
- Describe the firm's experience with formerly homeless tenants, or similar population, including its standard procedures regarding resident meetings, resident outreach and interaction with service providers.
- Describe the firm's experience with trauma-informed systems, including knowledge, skill and ability to work with tenants who have been chronically traumatized.

e. **Service Provider**

The successful provision of support services for the residents is critical to the overall success of the development program. The submittal should demonstrate the service provider(s)' track record of effective collaboration, coordination and delivery of services and other resources needed by households being served within a housing program. Provide an **Attachment 5 – Service Provider Residential Experience** for the Project

- Describe the service provider(s) experience of at least 36 months providing

supportive services to formerly homeless adults and/or formerly homeless seniors in San Francisco in a residential setting.

- The selected Development Team will be expected to pursue new No Place Like Home (NPLH) state funding that is anticipated to be available in 2018. As such, the lead service provider shall have at least 36 months' experience serving persons who qualify as members of one or more special needs populations whose service needs are similar to those of the Target Population. If this experience does not include experience serving persons in permanent supportive housing, it must include experience helping persons address barriers to housing stability. In general terms, describe the Service Provider(s)' types of services made available to formerly homeless adults and/or formerly homeless seniors; where services are provided, how clients' needs are assessed and how a plan for addressing those needs is developed; how clients are linked to the City's safety net of services and assisted in their efforts to access those services.
- Specify the duration of services contracts with City departments, contact information for any public agency providing funding for services, and documentation of quality of services provided such as contract monitoring reports or funding source evaluations;
- Describe the service provider's experience with billing to Medi-Cal.

f. **Community Engagement**

- Describe the development team's experience implementing community engagement plans for housing developments, including description of the level of community engagement, the duration of the plan and community engagement, and the number of community groups or adults involved. Describe any positive or negative results of the team's community engagement plans including any opposition to the team's projects that may have resulted from the team's engagement with the community.
- Include in the description of experience examples of overcoming community opposition to a development project and how the team member(s) addressed the opposition.
- Finally, characterize the team's knowledge and familiarity with the Downtown Area Plan, the surrounding neighborhood, local community groups and area stakeholders.

g. **Modular Construction**

Describe the experience of development team or individual members of the development team in successfully designing and/or constructing modular residential buildings. Descriptions should include role of team member in the development process (developer,

architect, consultant, etc.) as well as a summary of key project components such as program, location, scale, etc. Describe both successes of each modular project listed, as well as any challenges confronted in implementing modular construction and a description of techniques and strategies used to overcome those challenges.

D. SCORING

Teams will be scored based on the extent to which they demonstrate experience and capacity beyond conformity with the minimum requirements up to the maximum point totals listed below.

a.	Development and Ownership Experience	40 pts
b.	Architecture & Design	20 pts
c.	Property Management	20 pts
d.	Service Provision	20 pts
e.	Community Engagement	10 pts
f.	Modular Construction	5 pts

E. ADDITIONAL SUBMITTALS

Complete responses must include all of the following elements in the order specified below:

1. Development Team

Using **Attachment 3 - Respondent Description**, provide the name of each organization, names of the organization's Director (or equivalent position) and primary contact persons, and phone numbers and email addresses for each of the following:

- Lead Developer and Co-Developers (if applicable)
- Narrative description of developer and/or co-developer's corporate structure, mission, and history.
- Development Consultant (if applicable)
- Owner(s) (if applicable)
- Lead Architect and other Architect(s)
- Property Manager(s)
- Service Provider(s)
- Other consultant(s) as necessary to demonstrate experience in the design and/or construction of modular housing

For each Lead Developer or Co-Developer, submit a current copy of the following documents:

- Certificate of good standing from California Secretary of State
- Certification of 501(c)(3) status from the Internal Revenue Service (for any nonprofit corporations).
- The latest two (2) years of either signed federal income tax returns (including schedules or attachments, if any); or audited financial statements (with management letters, if any).

Using **Attachment 4 – Projected Staffing Workload Form**, list work assignments (existing or contemplated) associated with each staff person expected to work on the Project for Developer and Architectural Firm.

Using **Attachment 5 – Service Provider Residential Experience**, list service provision experience in permanent supportive housing settings.

2. EVIDENCE OF AUTHORITY

Provide a certified corporate resolution of the applicant or, in the case of a partnership, the applicant's general partner, expressly authorizing the applicant to provide a response to this RFQ and, if selected by the City, to enter into negotiations with the City for the long-term lease of the MOHCD Site.

3. DISCLOSURE FORM

Submit a completed and signed copy of **Attachment 6 – Disclosures**, which requires any respondent to this RFQ to disclose defaults, lawsuits, legal proceedings, bankruptcy filings or financial interests affiliated with MOHCD staff or Citywide Affordable Housing Loan Committee members.

IV. BACKGROUND

A. SITE

The Site is comprised of 2 parcels located at 1064 Mission Street and 1068 Mission Street. The Site is adjacent to the James R. Browning Courthouse – 95 7th Street, at the corner of 7th and Mission Street to the west, and another affordable housing development currently under construction at 1036 Mission Street to the east.

- 1064 Mission Street - Block 3703, Lot 084, 48,719 square feet (approximately 1.12 acres). This parcel is currently being used as an improved 175-space parking lot with frontage on Stevenson Street and the terminus at Jessie Street alley.
- 1068 Mission Street - Block 3703, Lot 040, 2,125 square feet. This parcel is improved with a two-story plus mezzanine and basement, reinforced concrete structure built in 1913.
- Total land area for the combined parcels is 50,844 square feet, or 1.17 acres.

As previously stated, The City and County of San Francisco recently submitted an application to acquire the Site from the federal government. MOHCD is currently in negotiations with the Department of Health and Human Services and the General Services Administration. As a condition of disposition from the federal government, the proposed permanent supportive housing must be operational within 3 years (36 months) of a fully executed Grant Deed between the City and the U.S. Department of Health and Human Services. Respondent must demonstrate ability to complete developments quickly in order to meet this timeline. An Environmental Assessment will be completed by MOHCD by November 8, 2017.

B. SOIL CONDITIONS

A Phase I Environmental Site Assessment for the Site indicates a number of recognized environmental conditions (REC). The Phase I can be found on the MOHCD website at: <http://sfmohcd.org/nofas-rfp-rfq-bids-jobs>

A Preliminary Geotechnical Evaluation for the Site can be found on the MOHCD website at: <http://sfmohcd.org/nofas-rfp-rfq-bids-jobs>

As part of the Selected Developer's predevelopment scope of work, a Phase II will be required to further evaluate environmental conditions.

For purposes of this RFQ, Respondents should assume that following any required mitigation, soil and subsoil conditions on the Site are sufficient to support a development that complies with the maximum allowable height, bulk and density limitations of the Site's applicable zoning requirements.

C. ZONING, LAND USE RESTRICTIONS

The parcels are currently zoned C-3-G – Downtown General Commercial District (See Planning Code Section 210.2) with a 90X height limit. The Site's zoning allows a Floor Area Ratio of 6.0 square feet of building area for every one square foot of lot area. There is no residential density limit as a ratio of units to lot area; density is regulated by the permitted height and bulk and required setbacks, exposure and open space of the development lot. Parking is not required for non-residential uses. Dwellings in a C-3-G zoned project where 100% of the units are affordable are exempt from off-street parking requirements.

The Site is located in the Downtown Area Plan. The Downtown Area Plan states "housing close to downtown contributes greatly to downtown vitality, helping to ensure that it remains active after working hours....To preserve the scale and character of outlying neighborhoods and promote the vitality of downtown, most new housing should be located adjacent to downtown in underused industrial and commercial areas. At the same time, the existing housing supply in and adjacent to downtown should be protected from demolition or conversions to nonresidential uses."

The Downtown Area Plan includes among its objectives, the following:

- Expand the supply of housing in and adjacent to downtown. (Objective 7)
- Protect residential uses in and adjacent to downtown from encroachment by commercial uses. (Objective 8)
- Provide quality open space in sufficient quantity and variety to meet the needs of downtown workers, residents and visitors. (Objective 9)

The Downtown Area Plan can be found [here](#).

Although this RFQ does not require submission of any site or architectural plans, Respondents should be aware of key zoning and land use provisions applicable to the Site, which include the following:

- Ground level Ceiling Height: Non-residential uses must have a floor-to-floor height of at least 14 feet;
- Streetscape and Pedestrian Improvements: Required
- Downtown Project Authorization is required for new construction in a C-3 District;
- The Downtown Project Authorization may be eligible for administrative approval pursuant to Planning Code Section 315;
- Maximum 90 ft building height;
- No off-street automobile parking required for residential or commercial uses; maximum limits apply (sec. 151.1);
- Bicycle parking will be required. (sec. 155.1);
- Institutional Uses, as defined in Section 102, are Permitted (*Institutional Use*. A Use Category that includes Child Care Facility, Community Facility, Private Community Facility, Hospital, Job Training, Medical Cannabis Dispensary, Philanthropic Administrative Services, Religious Institution, Residential Care Facility, Social Service or Philanthropic Facility, Post-Secondary Educational Institution, Public Facility, School, and Trade School.); and
- Public Art (Section 429).

It will be the sole responsibility of the Selected Developer to verify all planning and zoning requirements pertinent to the Site's development as housing for the formerly homeless.

V. DEVELOPMENT PLAN – Respondents are not required to submit a development plan with their submissions. The following information, in addition to the Development Program Objectives previously provided, is being provided to convey established goals and requirements imposed on the project.

A. DEVELOPMENT PROGRAM

1. Housing Program Objectives:

a) INCOME TARGETING:

- All residential units targeted to formerly homeless adults.
- At least 100 units targeted to formerly chronically homeless seniors who are 62 years of age and older.

2. Housing Financing:

A financing plan is not required with this submission, however, the Selected Developer will be expected to adhere to the following project financing parameters:

a) HOUSING DEVELOPMENT SOURCES ASSUMPTIONS:

- 4% low-income housing tax credits and tax-exempt bond financing (9% LIHTC proposals will not be considered).
- Federal Home Loan Bank Affordable Housing Program funds.
- Additional, non-MOHCD sources of funds that meet the City's affordability goals and reduce to the greatest extent feasible required MOHCD gap funding, including State of

California Affordable Housing and Sustainable Communities (AHSC) funding or No Place Like Home (NPLH) funding.

- MOHCD gap funds (in the form of a 55-year, residual receipts loan), minimized to the greatest extent feasible by other funding sources.
- The development must be financially feasible, including realistic development and operating budget projections that conform to industry standards and maximize the use of available financing.

b) 1ST FULL YEAR HOUSING OPERATING BUDGETS ASSUMPTIONS:

- Operating Income, including:
 - Tenant-paid rents for formerly homeless households (exclusive of utilities) currently estimated at \$250 PUPM for 1BR units. Actual tenant-paid rents for formerly homeless units will be based on 30% of household incomes.
 - Funding from the City's Local Operating Subsidy Program ("LOSP"), through a 15-year contract with MOHCD, to cover the difference between tenant-paid rents for all homeless units (LOSP units) and operating expenses attributable to LOSP units. LOSP operating subsidy calculations should account for all typical costs of operations, reserves and fees on a pro-rata basis. LOSP subsidies may not be used to pay hard debt service, other than qualified minimal debt service payments for state financing.
 - LOSP subsidies may not be used to pay deferred developer fee.
- Operating Expenses, including:
 - 24-hour desk coverage every day.
 - All typical costs of operations, including annual reserves deposits, administrative and management fees and other expenses in conformance with MOHCD's Underwriting Guidelines.
 - The operating budget should exclude support services such as case management and counseling but may include one FTE Services Coordinator/Connector.
- A 20-Year Cash Flow Projection, including:
 - Annual income increases at 2.5%
 - Annual expense increases at 3.5%
 - Typical waterfall surplus cash distributions including, as applicable, soft lender payments, and incentive management fees, all in conformance with MOHCD's Underwriting Guidelines and Operating Fee Policy.

B. OCCUPANCY PREFERENCES

1. Lease-Up Preferences

The Selected Developer will retain final selection authority over all resident applicants.

HSH will refer homeless adults and seniors age 62 and older and individuals.

HSH will follow the definition of “homeless” provided below to determine eligibility. In addition, households can only be referred by HSH for occupancy at the Project if their annual household income does not exceed 30% of AMI.

42 U.S. Code § 11302 - General definition of homeless individual:

(a) In general For purposes of this chapter, the terms “homeless”, “homeless individual”, and “homeless person” means:

- (1)** an individual or family who lacks a fixed, regular, and adequate nighttime residence;
- (2)** an individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;
- (3)** an individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including hotels and motels paid for by Federal, State, or local government programs for low-income adults or by charitable organizations, congregate shelters, and transitional housing);
- (4)** an individual who resided in a shelter or place not meant for human habitation and who is exiting an institution where he or she temporarily resided;
- (5)** an individual or family who—
 - (A)** will imminently lose their housing, including housing they own, rent, or live in without paying rent, are sharing with others, and rooms in hotels or motels not paid for by Federal, State, or local government programs for low-income adults or by charitable organizations, as evidenced by—
 - (i)** a court order resulting from an eviction action that notifies the individual or family that they must leave within 14 days;
 - (ii)** the individual or family having a primary nighttime residence that is a room in a hotel or motel and where they lack the resources necessary to reside there for more than 14 days; or
 - (iii)** credible evidence indicating that the owner or renter of the housing will not allow the individual or family to stay for more than 14 days, and any oral statement from an individual or family seeking homeless assistance that is found to be credible shall be considered credible evidence for purposes of this clause;
 - (B)** has no subsequent residence identified; and
 - (C)** lacks the resources or support networks needed to obtain other permanent housing; and
- (6)** unaccompanied youth and homeless families with children and youth defined as

homeless under other Federal statutes who—

(A) have experienced a long term period without living independently in permanent housing,

(B) have experienced persistent instability as measured by frequent moves over such period, and

(C) can be expected to continue in such status for an extended period of time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse, the presence of a child or youth with a disability, or multiple barriers to employment.

(b) Domestic violence and other dangerous or life-threatening conditions

Notwithstanding any other provision of this section, the Secretary shall consider to be homeless any individual or family who is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions in the individual's or family's current housing situation, including where the health and safety of children are jeopardized, and who have no other residence and lack the resources or support networks to obtain other permanent housing.

(c) Income eligibility

(1) In general

A homeless individual shall be eligible for assistance under any program provided by this chapter, only if the individual complies with the income eligibility requirements otherwise applicable to such program.

(2) Exception

Notwithstanding paragraph (1), a homeless individual shall be eligible for assistance under title I of the Workforce Innovation and Opportunity Act [29 U.S.C. 3111 et seq.].

(d) Exclusion

For purposes of this chapter, the term "homeless" or "homeless individual" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(e) Persons experiencing homelessness

Any references in this chapter to homeless adults (including homeless persons) or homeless groups (including homeless persons) shall be considered to include, and to refer to, adults experiencing homelessness or groups experiencing homelessness, respectively.

2. Affirmative Marketing Plan:

No marketing plan is required as all units will be direct referrals from HSH.

C. RESIDENT SERVICES

1. Services Plans: A Services Plan is not required with this submission, however, the Selected Developer will be required to develop a services plan that includes the following:

- a) A trauma-informed systems services plan (“Services Plan”) that demonstrates an understanding of the housing and services needs of formerly homeless households who have experienced chronic trauma.
- b) The Services Plan should include access to and coordination with mainstream community services, subcontracted and/or partner services, and a commitment by each service provider to coordinate with onsite supportive services and property management through regularly scheduled meetings to ensure sound operational and building management practices.
 - (1) For services provided off-site, the plan must describe what public or private transportation options will be available to tenants in order to provide them reasonable access to these services. Reasonable access is access that does not require walking more than ½ mile.
 - (2) Description of how the supportive services are culturally and linguistically competent for persons of different races, ethnicities, sexual orientations, gender identities, and gender expressions. This includes explaining how services will be provided to tenants who do not speak English, or have other communication barriers, including sensory disabilities, and how communication among the services providers, the property manager and these tenants will be facilitated;
 - (3) Description of how the supportive services staff and property management staff will work together to prevent evictions, to adopt and ensure compliance with harm reduction principles, and to facilitate the implementation of reasonable accommodation policies from rent-up to ongoing operations of the Project;
 - (4) General service provider and property manager communication protocols;
 - (5) Description of how the physical design of the Project fosters tenant engagement, onsite supportive services provision, safety and security, and sustainability of furnishings, equipment, and fixtures; and
 - (6) Other information needed to evaluate the supportive services to be offered consistent with the Program.
- c) The Services Plan must include a description of the minimum services to be provided and the estimated frequency of proposed services, indicating, as appropriate, services specifically geared for homeless households. Examples of the services activities the supportive services staff performs may include:
 - Early intervention with Property Management in Resident Selection to conduct assessments.

- Ongoing outreach and engagement of the tenant population, with specific emphasis seniors.
- Assistance with developing tenant leadership including support for the formation of a tenant council.
- Assistance with overcoming disorganization due to homelessness, mental health concerns and adverse childhood experiences.
- Engagement with service providers that promote safety and stability in home and in community residing within the building.
- Collaboration with other trauma-informed services providers to teach self-reliance and empowerment.
- Aggressive outreach to outside providers to teach, coach and mentor residents on various key areas, i.e. hoarding and cluttering, domestic violence and hunger security.
- Connections with key service providers such as nursing programs, workforce development, legal aid and beauty and barber to encourage adult education, skill development, and job placement/retention opportunities.
- Connections to benefits and educational opportunities as appropriate.
- Trauma-informed, ongoing training for services staff and property management teams.
- Referrals and assistance with accessing primary medical care and other community services as needed and connection with neighborhood community clinics.
- Referrals and assistance with accessing basic needs such as clothing and food.
- Eviction prevention support and referrals.
- Referrals to supported pre-vocational/vocational activities appropriate for the skill level of residents of the building.
- Referral to and onsite support for mental health and substance use management and recovery with a focus on harm reduction.
- Conflict resolution among tenants using trauma-informed principles.
- Recreation, community building, social, and/or other group programming.
- Coordination and supervision of In Home Support Services and other housekeeping assistance.

d) The Services Plan must also include staffing information (number of FTEs or percent thereof, type of services staff, roles of services staff). Services for all the units must be provided through a case manager to unit ratio of no less than 1 case manager for every 35 units.

2. Services Funding and Budgets:

a) For the formerly homeless residents: services for single adults and seniors will be funded separately HSH through a direct contract with the Project's service provider.

b) HSH's Tier 5 funding level of \$4,902 per unit per year in service funding for the formerly homeless units will be in place. For RFQ-submission purposes, a Respondent can assume a minimum project size of 250 residential units.

c) Services funding will be conditioned on continuous compliance with the terms of the Respondent's Local Operating Subsidies Program ("LOSP") agreements with MOHCD.

d) Providers will be expected to bill as many services as possible to Medi-Cal.

D. COMMUNITY ENGAGEMENT

This RFQ does not require respondents to submit a community engagement plan for the Site. Rather, the Selected Developer will be expected to work with the MOHCD and community stakeholders to formulate a plan that includes interaction with community groups around urban design issues, as well as traditional community stakeholder input for the planned project. Prior to commencing preparation of a development plan, the Selected Developer must work with MOHCD staff to design and implement a community outreach program that will engage the community, including consultation with adjacent government tenants, to solicit input on construction and design parameters and process, and community concerns and desires regarding community space and neighborhood amenities.

E. DISPOSITION OF THE SITE

1. Ground Lease Option

For demonstration of site control as required for financing applications, MOHCD will provide the Selected Developer with an Option to Ground Lease. Exercise of the option will be conditioned on satisfaction of certain conditions including the following:

- MOHCD approval of a community outreach and plan for the Site;
- Commitments of all financing necessary to construct and operate the proposed development;
- Issuance of all required permits and approvals necessary to construct and operate the proposed development;
- Board of Supervisors approval of the ground lease for the MOHCD Parcel; and
- Timely satisfaction of any other conditions imposed by the City.

2. Ground Lease

MOHCD intends to transfer the Site to the Selected Developer through a long-term ground lease of 65 years with an option to extend another 34 years for a total of 99 years. Transfer of the Site will be "as is" with respect to the physical and regulatory condition of the Site. The Ground Lease will be structured to include an annual rent obligation equivalent to 10% of the appraised value of the Site for the term of the lease. Payments shall consist of an annual Base Rent of up to \$15,000 which may be reduced given that all rental units are permanent supportive housing and Residual Rent. Annual rent is re-determined on the 15th anniversary date of ground lease and

every 15 years thereafter. The City's execution of a long-term ground lease for the Site will be subject to approval of the City's Board of Supervisors, in its sole and absolute discretion.

F. UNDERWRITING GUIDELINES.

The Selected Developer's underwriting assumptions must conform to MOHCD's most current Underwriting Guidelines (<http://sfmohcd.org/documents-reports-and-forms>) and other published MOHCD policies, such as its Developer Fee Policy.

G. PREDEVELOPMENT FUNDING.

MOHCD will provide up to \$3,000,000 in predevelopment funding to the Selected Developer, subject to the Selected Developer's demonstration of its compliance with the City's vendor requirements and approval by the San Francisco Citywide Affordable Housing Loan Committee.

VI. TERMS AND CONDITIONS OF REQUEST FOR QUALIFICATIONS

A. DEVELOPER RESPONSIBILITIES

The Selected Developer will be responsible for all aspects of development of the Site, including but not limited to the following:

- Involving local community stakeholders in the program setting and initial design of the Site.
- Conducting all appropriate due diligence, investigating and determining conditions of the Site and the suitability of the Site for the proposed Development.
- Securing all required development approvals, including but not limited to any necessary permits or approvals from the City's Planning Department and Department of Building Inspection, and from federal and State agencies associated with environmental and historic preservation reviews (including Certificates of Appropriateness) as applicable.
- Obtaining adequate financing for all aspects of the proposed Development, including predevelopment, construction and operation.
- Designing and building the Development in a manner that produces a high-quality, enduring living environment.
- Owning, managing, and operating the Development in a manner that ensures its long-term financial viability and the ongoing satisfaction of residents.
- Complying with the requirements of any financing for the Development, including but not limited to:
 - a. Equal Employment Opportunities – The Selected Developer will be required to comply with local and federal procurement requirements, including the provision of equal employment opportunities for disadvantaged business consultants, architects, contractors, and other potential development team members to participate in the Development. To ensure that equal opportunity plans are consistent with City and

Federal procurement requirements, sponsors should meet with MOHCD and San Francisco Contract Monitoring Division (CMD) staff prior to hiring their development team to develop a plan for such compliance. Although the City's Contract Monitoring Division (CMD) does not require prior approval or monitoring of procedures for selecting the architect for purposes of responding to this RFQ, the architect's Small Business Enterprise (SBE) status will be counted toward the overall Development's procurement goals which will be set at a later date.

b. Environmental Review - Depending on conditions at the Development Site and on Development plans, the proposed Development will be subject to review under the California Environmental Quality Act (CEQA), the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA) and specifically the Section 106 historical resources preservation review. Department of City Planning design review may also be required.

c. Accessibility Requirements - Development sponsors will be responsible for meeting all applicable accessibility standards related to publicly-funded multifamily housing under Section 504 of the Rehabilitation Act of 1973, the Architectural Barriers Act, the Americans with Disabilities Act, and certain statutes and regulations of the City and County of San Francisco. At least 50% of all units must be adaptable and a minimum of 10% of the units must be accessible, including units for the visually and hearing impaired.

d. Prevailing Wages – This Development will be subject to applicable local, state or federal requirements with regard to labor standards. Developers should take prevailing wage requirements and labor standards into account when seeking estimates for contracted work, especially the cost of construction, and other work to which the requirements apply, and when preparing development budgets overall.

e. Employment and Training – The Selected Developer will be required to work with the CityBuild initiative of the Office of Economic and Workforce Development to comply with local and federal requirements regarding the provision of employment opportunities for local and low-income residents and small businesses during both the development and operation of the Development, including complying with the City's First Source Hiring requirements.

f. Sustainable Design - The Mayor's Office of Housing seeks to maximize the overall sustainability of financed projects. The selected development team will be required to pursue any funding that may become available to help pay for the cost of planning and implementing green building components.

g. Insurance Requirements – see Exhibit A -- Insurance Requirements

B. ERRORS AND OMISSIONS IN RFQ

Respondents are responsible for reviewing all portions of this RFQ. Respondents are to promptly notify MOHCD, in writing, if the respondent discovers any ambiguity, discrepancy, omission, or other error in the RFQ. Any such notification should be directed to MOHCD promptly after discovery, but in no event later than five (5) working days prior to the date for receipt of proposals. Modifications and clarifications will be made by addenda as provided below.

C. ADDENDA TO RFQ

MOHCD may modify the RFQ, prior to the response due date, by issuing written addenda. Addenda will be sent via email to the last known address of each person or firm listed with MOHCD as having received a copy of the RFQ for proposal purposes. MOHCD will make reasonable efforts to notify Respondents in a timely manner of modifications to the RFQ. Notwithstanding this provision, the Respondent shall be responsible for ensuring that its proposal reflects any and all addenda issued by MOHCD prior to the proposal due date regardless of when the proposal is submitted.

D. OBJECTIONS

1. RFQ Terms - Should any interested party object on any ground to any provision or legal requirement set forth in this RFQ, that party must provide written notice to MOHCD setting forth with specificity the grounds for the objection within 14 calendar days of the developer selection announcement date. Failure to object in the manner and within the time set forth in this paragraph will constitute a complete and irrevocable waiver of any objection.
2. Notice of Non-Responsiveness - Should a Respondent object on any ground to a determination that its proposal is non-responsive to this RFQ, that party must provide written notice to MOHCD setting forth with specificity the grounds for the objection no more than 7 calendar days after the date of the letter notifying the Respondent of MOHCD's determination of non-responsiveness. Failure to object in the manner and within the time set forth in this paragraph will constitute a complete and irrevocable waiver of any objection.
3. Selection of Respondent for Exclusive Negotiations - Should any interested party object on any ground to the MOHCD Director's authorization to proceed with exclusive negotiations with a selected Respondent, that party must provide written notice to MOHCD setting forth with specificity the grounds for the objection no more than 7 calendar days after the developer selection is made public and exclusive negotiations are authorized. If a Respondent files a timely objection, MOHCD's authorization to enter into exclusive negotiations with the selected Respondent will not be binding until the MOHCD Director denies the protest. A Mayoral decision to grant the protest will void MOHCD's prior exclusive negotiations authorization. Failure to

object in the manner and within the time set forth in this paragraph will constitute a complete and irrevocable waiver of any objection.

4. Delivery of Objections - Objections must be submitted in writing, addressed to the person identified on in this RFQ and delivered to the MOHCD receptionist during business days between the hours of 8:00 a.m. and 5:00 p.m. at 1 South Van Ness Avenue, 5th Floor by the dates due in order to be considered. If an objection is mailed, the objector bears the risk of non-delivery by the deadlines specified above. Objections should be transmitted by a means that will provide written confirmation of the date MOHCD received the objections.

E. CLAIMS AGAINST MOHCD

No Respondent will obtain by its response to this RFQ, and separately by its response waives, any claim against MOHCD by reason of any or all of the following: any aspect of this RFQ, any part of the selection process, any informalities or defects in the selection process, the rejection of any or all proposals, the acceptance of any proposal, entering into exclusive negotiations, conditioning exclusive negotiations, terminating exclusive negotiations, approval or disapproval of plans or drawings, entering into any transaction documents, the failure to enter into a lease or lease disposition and development agreement, any statements, representations, acts, or omissions of MOHCD, the exercise of any discretion set forth in or concerning any of the above, and any other matters arising out of all or any of the above.

F. SUNSHINE ORDINANCE

In accordance with San Francisco Administrative Code Section 67.24(e), contractors' bids, responses to RFQ's and all other records of communications between the City and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision 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 benefits until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

G. RESERVATIONS OF RIGHTS BY THE CITY

1. The issuance of this RFQ and the selection of a developer pursuant to this RFQ are in no way a limitation of the discretion of any City board, commission, department, employee or official with respect to any review or approval required in connection with the proposed Development. The City's selection of a developer is in no way deemed to be the final approval of any Development proposed by the developer.

2. The information in this RFQ is provided solely for the convenience of respondents.

3. The City expressly reserves the right at any time to do waive or correct any defect or technical error in any response or procedure, as part of the RFQ or any subsequent negotiation process; reject any or all responses, without indicating the reasons for such rejection; reissue a Request for Proposals; modify or suspend any and all aspects of the selection procedure, the scope of the proposed Development or the required responses, or the processes indicated in this RFQ; request that respondents clarify, supplement or modify the information submitted; extend deadlines for accepting responses, or request amendments to responses after expiration of deadlines; negotiate with any, all or none of the respondents to this RFQ; make a selection based directly on the proposals, or negotiate further with one or more of the respondents; during negotiation, expand or contract the scope of the proposed Development, or otherwise alter the Development concept in order to respond to new information, community or environmental issues; if at any time prior to the execution of binding agreements with the developer MOHCD, in its sole discretion, determines that the Selected Developer will be unable to proceed with a timely and feasible Development in accordance with this RFQ, MOHCD may terminate negotiations with the highest ranked respondent and begin negotiations with the next highest ranked respondent; or determine that no Development will be pursued.

4. The issuance of this RFQ does not obligate the City to pay any costs whatsoever incurred by any respondent, including but not limited to costs incurred in connection with the preparation or presentation of responses or negotiations with the City. Developer teams responding to this RFQ do so at their own expense.

5. The issuance of this RFQ is only an invitation to submit qualifications, and does not constitute an agreement by the City that any contract will actually be entered into by the City. This RFQ does not in any way limit the discretion of any City board, commission, employee or official with respect to any review or approval of any aspect of a proposed Development.

6. The City will not approve any ground lease for the Site that would allow for its development until there has been compliance with the California Environmental Quality Act (CEQA), and, as applicable, the National Environmental Protection Act (NEPA). If the proposed Development is found to cause significant adverse impacts, the City reserves absolute discretion to require additional environmental analysis, and to: (a) modify the Development to mitigate significant adverse environmental impacts; (b) select feasible alternatives which avoid significant adverse impacts of the proposed Development; or (c) reject or proceed with the Development as proposed, depending upon a finding of whether or not the economic and social benefits of the Development outweigh otherwise unavoidable significant adverse impacts of the Development.

7. The City reserves the right to disqualify any respondent to this RFQ based on any real or apparent conflict of interest that is disclosed by the responses submitted or on the basis of other information available to the City. The City may exercise this right in its sole discretion.

Exhibit A: Insurance Requirements

1. Developer, Contractors.

(a) to the extent Developer 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 Developer is conducting any activity on, alteration or improvement to the Family 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 Developer's architects, engineers and surveyors. If the professional liability insurance provided by the architects, engineers, or surveyors is "Claims made" coverage, Developer 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) a crime policy or fidelity bond covering Developer's officers and employees against dishonesty with respect to the Funds of no less than Seventy Five Thousand Dollars (\$75,000) each loss, with any deductible not to exceed Five Thousand Dollars (\$5,000) each loss, including the City as additional obligee or loss payee;

(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 Family Site coverage. This policy may be provided by the Developer's contractor, provided that the policy must be "claims made" coverage and Developer must require Developer's contractor to maintain these minimum limits for no less than three (3) years beyond completion of the construction or remodeling.

2. Property Insurance.

Developer 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 Developer or its contractor, including coverage in transit and storage off-Family 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 Developer or its contractor, including coverage in transit and storage off-Family 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-Development basis; and with a deductible not to exceed Ten Thousand Dollars (\$10,000) each loss, including the City and all subcontractors as loss payees.

(ii) Performance and payment bonds of contractors, each in the amount of One Hundred Percent (100%) of contract amounts, naming the City and Developer as dual obligees or other completion security approved by the City in its sole discretion.

(c) Upon completion of construction:

(i) Property insurance, excluding earthquake and flood, in the amount no less than One Hundred Percent (100%) of the replacement value of all completed improvements and City property in the care, custody and control of the Developer or its contractor. For rehabilitation/construction Developments that are unoccupied by residential or commercial tenants, Tenant must obtain Property Insurance by the date that the Development receives a Certificate of Substantial Completion.

(ii) Boiler and machinery insurance, comprehensive form, covering damage to, loss or destruction of machinery and equipment located on the Family Site that is used by Developer for heating, ventilating, air-conditioning, power generation and similar purposes, in an amount not less than one hundred percent (100%) of the actual replacement value of such machinery and equipment with a deductible not to exceed Ten Thousand Dollars (\$10,000) each loss, including the City as loss payee.

The following notice is provided in accordance with the provisions of California Civil Code Section 2955.5: Under California law, no lender shall require a Developer, as a condition of receiving or maintaining a loan secured by real property, to provide hazard insurance coverage against risks to the improvements on that real property in an amount exceeding the replacement value of the improvements on the property.

3. Commercial Space.

Developer must require that all nonresidential tenants' liability insurance policies include Developer and the City as additional insureds, as their respective interests may appear. Throughout the term of any lease of Commercial Space in the Development, Developer must require commercial tenants to maintain insurance as follows:

(a) to the extent the tenant has "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;

(b) commercial general 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 coverage for contractual liability; personal injury; advertisers' liability; including coverage for loss of income due to an insured peril for twelve (12) months; owners' and contractors' protective; broadform property damage; explosion, collapse and underground (XCU); products and completed operations coverage;

(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) with respect to any tenant who has (or is required by Law to have) a liquor license and who is selling or distributing alcoholic beverages and/or food products on the leased premises, to maintain liquor and/or food products liability coverage with limits not less than One Million Dollars (\$1,000,000), as appropriate;

(e) special form coverage insurance, including vandalism and malicious mischief, in the amount of 100% of the full replacement cost thereof, covering all furnishings, fixtures, equipment, leasehold improvements, alterations and property of every kind of the tenant and of persons claiming through the tenant; and

(f) full coverage plate glass insurance covering any plate glass on the commercial space.

4. General Requirements.

(a) General and automobile liability policies of Developer, 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, Developer hereby waives all rights of subrogation against the City to the extent of any loss covered by Developer's insurance, except to the extent subrogation would affect the scope or validity of insurance.

(d) Approval of Developer's insurance by the City will not relieve or decrease the liability of Developer 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 Developer demonstrates to the City's satisfaction that the increased coverage is commercially unreasonable and unavailable to Developer.

(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) Developer 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.

Appendices

Attachment 1 - Map of Site

Attachment 2 - RFQ Registration Form

Attachment 3 - Respondent Description

Attachment 4 - Projected Staffing Workload

Attachment 5 - Service Provider Residential Experience

Attachment 6 - Disclosures

Attachment 1

Map of the Site

Attachment 2

RFQ Registration Form

Attachment 3

Respondent Description

Attachment 4

Projected Staffing Workload

Attachment 5

Service Provider Residential Experience

Attachment 6

Disclosures

OFFICE OF THE MAYOR
SAN FRANCISCO



RECEIVED
LONDON N. BREED
BOARD OF SUPERVISORS
MAYOR
SAN FRANCISCO

2019 OCT 29 PM 4:22

BY _____

Sc

TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Sophia Kittler
RE: Grant Agreement – 1064 Mission Homeless Services Center LLC – City-Owned and Operated Homeless Services Center to be located at 1064-68 Mission Street – Not to Exceed \$13,450,689
DATE: Tuesday, October 29, 2019

Resolution approving and authorizing the Director of the Mayor's Office of Housing and Community Development to execute a Grant Agreement ("Agreement") with 1064 Mission Homeless Services Center LLC, a California limited liability corporation, in an amount not to exceed \$13,450,689 to finance the construction of a City-owned and operated Homeless Services Center for residents experiencing homelessness ("Project") located on the two floors on the ground level of 1064-68 Mission Street facing Stevenson Street;

Should you have any questions, please contact Sophia Kittler at 415-554-6153.



San Francisco Ethics Commission

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

Phone: 415.252.3100 . Fax: 415.252.3112

ethics.commission@sfgov.org . www.sfethics.org

Received On:

File #:

191115

Bid/RFP #:

Notification of Contract Approval

SFEC Form 126(f)4

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

A Public Document

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

1. FILING INFORMATION	
TYPE OF FILING	DATE OF ORIGINAL FILING (for amendment only)
Original	
AMENDMENT DESCRIPTION – Explain reason for amendment	
2. CITY ELECTIVE OFFICE OR BOARD	
OFFICE OR BOARD	NAME OF CITY ELECTIVE OFFICER
Board of Supervisors	Members
3. FILER'S CONTACT	
NAME OF FILER'S CONTACT	TELEPHONE NUMBER
Angela Calvillo	415-554-5184
FULL DEPARTMENT NAME	EMAIL
Office of the Clerk of the Board	Board.of.Supervisors@sfgov.org
4. CONTRACTING DEPARTMENT CONTACT	
NAME OF DEPARTMENTAL CONTACT	DEPARTMENT CONTACT TELEPHONE NUMBER
Anne Romero	415-701-5525
FULL DEPARTMENT NAME	DEPARTMENT CONTACT EMAIL
MOH Mayor's Office of Housing	anne.romero@sfgov.org

5. CONTRACTOR	
NAME OF CONTRACTOR 1064 Mission Homeless Services Center LLC	TELEPHONE NUMBER 415-355-7111
STREET ADDRESS (including City, State and Zip Code) 1256 Market Street San Francisco CA 94102	EMAIL

6. CONTRACT		
DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)	ORIGINAL BID/RFP NUMBER	FILE NUMBER (If applicable) 191115
DESCRIPTION OF AMOUNT OF CONTRACT \$13,450,689		
NATURE OF THE CONTRACT (Please describe) An Amended and Restated Grant Agreement in an amount of up to \$13,450,689 to fund expenses associated with the development of the Homeless Services Center (HSC) on the first and second floors of 1064-68 Mission Street project to be co-operated by the Department of Public Health (DPH) and the Department of Homelessness and Supportive Housing (HSH). Development funds are being work ordered by DPH and HSH to MOHCD for disbursement.		

7. COMMENTS

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

9. AFFILIATES AND SUBCONTRACTORS

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

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Gualco	Barbara	Other Principal Officer
2	Shoemaker	Doug	CEO
3	Clayton	Melissa	Other Principal Officer
4	Agostino	Val	Other Principal Officer
5	Bayley	Amy	Other Principal Officer
6	Saab	Bruce	Other Principal Officer
7	Holder	Ed	Other Principal Officer
8	Villablanca	Erika	Other Principal Officer
9	Graf	Jane	Other Principal Officer
10	Dolin	Jennifer	Other Principal Officer
11	Rosenblum	Joe	Other Principal Officer
12	Daues	Stephen	Other Principal Officer
13	Spears	Steve	Other Principal Officer
14	Dodds	Vince	CFO
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9. AFFILIATES AND SUBCONTRACTORS

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

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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9. AFFILIATES AND SUBCONTRACTORS

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

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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☐ Check this box if you need to include additional names. Please submit a separate form with complete information. Select "Supplemental" for filing type.

10. VERIFICATION

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

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

SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK

DATE SIGNED

BOS Clerk of the Board