

**GRANT AGREEMENT**

between

**CITY AND COUNTY OF SAN FRANCISCO**

and

**COUNTY OF SAN MATEO**

**THIS GRANT AGREEMENT** (“Agreement”) is made as of **July 1, 2023**, in the City and County of San Francisco, State of California, by and between the **COUNTY OF SAN MATEO** (“Grantee”) and the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (“City”) acting by and through its Mayor’s Office of Housing and Community Development (“Department”),

### **RECITALS**

**WHEREAS**, the Grant is authorized under Francisco Administrative Code Section; and 21G.3 (a)(1).

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

to address the housing needs of low-income people living with HIV/AIDS and their families; and

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

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

### **Article 1 Definitions**

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

1.1 **“Acquired Immunodeficiency Syndrome (AIDS) or Related Diseases”** shall mean the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome, including infection with the human immunodeficiency virus (HIV).

1.2 **“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 with respect to the grant application; and (iii) all amendments, modifications or supplements to any of the foregoing approved in writing by City.

1.3 **“Budget”** shall mean the budget attached hereto as part of Appendix A.

1.4 **“Contractor”** shall have the meaning as “Grantee” if used in this Agreement, as certain City contracting requirements also apply to grants of the City of San Francisco.

1.5 **“Controller”** shall mean the Controller of City.

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

1.7 **“Grant”** shall mean this Agreement.

1.8 **“Grantee”** shall mean County of San Mateo, 225 37<sup>th</sup> Avenue Pony HI, T324, San Mateo, CA 94403.

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

1.10 **“Grant Plan”** shall have the meaning set forth in Appendix A.

1.11 **“Indemnified Parties”** shall mean: (i) City, including the Department 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.

1.12 **“HOPWA Program”** shall mean, as applicable, the HOPWA Program and the HOPWA-CV Program on file with MOHCD/OEWD, together with all applicable federal regulations and the HOPWA and HOPWA-CV grant agreements between HUD and City.

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

## **Article 2 Appropriation and Certification of Grant Funds**

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

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

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

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

**Maximum Costs.** Except as may be provided by City ordinances governing emergency conditions, City and its employees and officers are not authorized to request Grantee to perform services or to provide materials, equipment and supplies that would result in Grantee performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies specified in this Agreement unless this Agreement is amended in writing and approved as required by law to authorize the additional services, materials, equipment or supplies. City is not required to pay Grantee for services, materials, equipment or supplies provided by Grantee that are beyond the scope of the services, materials, equipment and supplies agreed upon herein and not approved by a written amendment to this Agreement lawfully executed by City. City and its employees and officers are not authorized to offer or promise to Grantee additional funding for this Agreement that exceeds the maximum amount of funding provided for herein. Additional funding for this Agreement in excess of the maximum provided herein shall require lawful approval and certification by the Controller. City is not required to honor any offered or promised additional funding which exceeds the maximum provided in this Agreement which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained. The Controller is not authorized to make payments on any agreement for which funds have not been certified as available in the budget or by supplemental appropriation.

## **Article 3 Term**

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

**3.2 Duration of Term.** The term of this Agreement shall commence on **July 1, 2023**, and expire on **June 30, 2025**, unless earlier terminated as otherwise provided herein. Grantee shall not begin performance of its obligations under this Agreement until it receives written notice from City to proceed.

## **Article 4 Implementation of Grant Plan**

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

**4.2 Qualified Personnel.** The Grant Plan shall be implemented only by competent personnel, properly certified and/or licensed, under the direction and supervision of Grantee.

**4.3 Reserved. (Grantor Vaccination Policy).**

**4.4 Ownership of Results.** Any interest of Grantee or any subgrantee, in drawings, plans, specifications, studies, reports, memoranda, computation sheets, the contents of computer diskettes, or other documents or Publications prepared by Grantee or any subgrantee in connection with this Agreement or the implementation of the Grant Plan or the services to be performed under this Agreement, shall become the property of and be promptly transmitted to City. Notwithstanding the foregoing, Grantee may retain and use copies for reference and as documentation of its experience and capabilities. Notwithstanding the foregoing, City shall not be entitled to data protected under medical privacy laws or data collected by Grantee not required by HUD for monitoring purposes.

**4.5 Publications and Work Product.**

**4.3.1** Grantee understands and agrees that City has the right to review, approve, disapprove or conditionally approve the work and property funded in whole or part with the Grant Funds, in compliance with HUD requirements for distribution of funds, whether those elements are written, oral or in any other medium. Grantee has the burden of demonstrating to City that each element of work or property funded in whole or part with the Grant Funds is directly and integrally related to the Grant Plan as approved by HUD.

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

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

## **Article 5 Use and Disbursement of Grant Funds**

**5.1 Maximum Amount of Grant Funds.** In no event under the terms of this agreement shall the amount of Grant Funds disbursed hereunder exceed **ONE MILLION SEVEN HUNDRED SIXTY EIGHT THOUSAND SIX HUNDRED AND FOURTEEN DOLLARS (\$1,768,614).**

**5.2 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 Budget and shall obtain the prior approval of City before transferring expenditures from one line item to another within the Budget.

**5.3 Disbursement Procedures; Funding Request.** City will disburse the Grant Amount to Grantee for eligible expenses incurred by Grantee on a cost-reimbursement basis. Grantee shall submit to City for approval a request for reimbursement (a "Funding Request") through MOHCD's grants management system or other procedure prescribed by the City together with copies of all invoices and other documents supporting the request. Any unapproved Funding Requests shall be returned by City to Grantee with a brief explanation why the Funding Request was rejected. If any such rejection relates only to a portion of eligible expenses itemized in a Funding Request, City shall have no obligation to disburse any Grant Funds for any other eligible expenses itemized in such Funding Request unless and until Grantee submits a Funding Request that is in all respects acceptable to City. Costs incurred by the 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 are not reimbursable.

**5.3.1** City shall make all disbursements of Grant Funds pursuant to this Section through electronic payment or by check payable to Grantee sent via U.S. mail in accordance with Article 15, unless MOHCD/OEWD otherwise agrees in writing, in its sole discretion. For electronic payment, City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through the City's Automated Clearing House (ACH) payments service/provider. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit [www.sfgov.org/ach](http://www.sfgov.org/ach). 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.

#### **5.4 State or Federal Funds**

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

**5.4.2 Grant Terms.** The funding for this Agreement is provided in full or in part by a Federal or State Grant to the City. As part of the terms of receiving the funds, the City is required to incorporate some of the terms into this Agreement and include certain reporting requirements. The incorporated terms and requirements are stated in Appendix D, "Grant Terms: Additional Requirements for Federally Funded Activities"

### **Article 6 Reporting Requirements; Audits; Penalties for False Claims**

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

**6.2 Organizational Documents.** If requested by City, Grantee shall provide to City the names of its current officers and directors.

**6.3 Notification of Defaults or Changes in Circumstances.** Grantee shall notify City

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

**6.4 Financial Statements.** Pursuant to San Francisco Administrative Code Section 67.32 and Controller requirements, if requested, within sixty (60) days following the end of each Fiscal Year, Grantee shall deliver to City an unaudited balance sheet and the related statement of income and cash flows for such Fiscal Year, all in reasonable detail acceptable to City, certified by an appropriate financial officer of Grantee as accurately presenting the financial position of Grantee. If requested by City, Grantee shall also deliver to City, no later than one hundred twenty (120) days following the end of any Fiscal Year, an audited balance sheet and the related statement of income and cash flows for such Fiscal Year, certified by a reputable accounting firm as accurately presenting the financial position of Grantee.

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

**6.6 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 6.5. Grantee shall permit City, its employees and authorized representatives to inspect, audit, examine and make excerpts and transcripts from any of the foregoing. The rights of City pursuant to this Section shall remain in effect so long as Grantee has the obligation to maintain such files, records, books, invoices, documents, payrolls and other data under this Article 6. Notwithstanding the foregoing, City shall have no right to review client health information protected by state and federal law.

**6.6.1** Grantee shall annually have its books of accounts audited by their Controller's Office and a copy of said audit report shall be transmitted to the Director of Public Health or his /her designee within one hundred eighty (180) calendar days following Grantee's fiscal year end date, or as soon as it becomes available. If Grantee expends \$750,000 or more in Federal funding per year, from any and all Federal awards, said audit shall be conducted in accordance with 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Said requirements can be found at the following website address: [https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200\\_main\\_02.tpl](https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl).

**6.6.2** If Grantee expends less than \$750,000 a year in Federal awards, Grantee is exempt from the single audit requirements for that year, but records must be available for review or audit by appropriate officials of the Federal Agency, pass-through entity and General Accounting Office. Grantee agrees to reimburse the City any cost adjustments necessitated by this audit report. Any audit report which addresses all or part of the period covered by this Agreement shall treat the service components identified in the detailed descriptions attached to Appendix A.

**6.6.3** The Director of MOHCD or his / her designee may approve a waiver of the audit requirement in Section 6.6.2 above, if the contractual Services are of a consulting or personal services nature, these Services are paid for through fee for service terms which limit the City's risk with such contracts, and it is determined that the work associated with the audit would produce undue burdens or costs and would provide minimal benefits. A written request for a waiver must be submitted to the DIRECTOR ninety (90) calendar days before the end of the Agreement term or Grantee's fiscal year, whichever comes first.

**6.7 Submitting False Claims.** The full text of San Francisco Administrative Code Chapter

21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that Section.

**6.8 Reserved. (Grantee's Board of Directors)**

**Article 7 Taxes**

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

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

**7.2.1** 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.

**7.2.2** 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.

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

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

**Article 8 Representations and Warranties**

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

**8.1 Reserved. (Organization; Authorization).**

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

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

**8.4 Conflict of Interest.**

**8.4.1** By executing this Agreement, Grantee certifies that it does not know of any fact

which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

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

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

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

### **Article 9 Indemnification and General Liability**

**Indemnification.** Grantee shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Grantee; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; (v) losses arising from Grantee's performance of this Agreement and/or execution of subcontracts not in accordance with the requirements of this Agreement, so long as each such injury, violation, loss, or strict liability (as set forth above) arises directly or indirectly from Grantee's performance of this Agreement, including, but not limited to, Grantee's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Grantee, its subgrantees, or either's agent or employee. Grantee shall also indemnify, defend and hold City harmless from all suits or claims or administrative proceedings for breaches of federal and/or state law regarding the privacy of health information, electronic records or related topics, arising directly or indirectly from Grantee's performance of this Agreement. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

9.1 **Duty to Defend.** In addition to Grantee's obligation to indemnify City, Grantee specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Grantee by City and continues at all times thereafter.

9.2 **Infringement Indemnity.** Grantee shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Grantee's Services.

9.3 **Incidental and Consequential Damages.** Losses covered under this Article 9 shall include any and all incidental and consequential damages resulting in whole or in part from Grantee's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that any

Indemnified Party may have under applicable law with respect to such damages.

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

## **Article 10 Insurance**

**10.1 Types and Amounts of Coverage.** Insurance limits are subject to Risk Management review and revision, as appropriate, as conditions warrant. Without limiting Grantee's liability pursuant to Article 9, Grantee shall maintain in force, during the full term of this Agreement, insurance in the following amounts and coverages:

- (a) Commercial General Liability Insurance with limits not less than \$2,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.
- (b) Commercial Automobile Liability Insurance with limits not less than \$2,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- (c) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness.
- (d) Professional Liability Insurance, applicable to Grantee's profession, with limits not less than \$2,000,000 for each claim with respect to negligent acts, errors or omissions in connection with the Services.
- (e) Reserved. (Technology Errors and Omissions Coverage)
- (f) Cyber and Privacy Insurance with limits of not less than \$2,000,000 per claim. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in any form.

### **10.2 Additional Insured Endorsements.**

- (a) The Commercial General Liability policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.
- (b) The Commercial Automobile Liability Insurance policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

### **10.3 Reserved. (Waiver of Subrogation Endorsements)**

### **10.4 Primary Insurance Endorsements**

- (a) The Commercial General Liability policy shall 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 the insurance applies separately to each insured against whom claim is made or suit is brought.
- (b) The Commercial Automobile Liability Insurance policy shall 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 the insurance applies separately to each insured against whom claim is made or suit is brought.

#### 10.5 Other Insurance Requirements

(a) Thirty (30) days' advance written notice shall be provided to the City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than ten (10) days' notice shall be provided to City. Notices shall be sent to the City email address: [helen.hale@sfgov.org](mailto:helen.hale@sfgov.org).

(b) Should any of the required insurance 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 years beyond the expiration of this Agreement, to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

(c) Should any of the required insurance 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.

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

(e) Before commencing any Services, Grantee shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Grantee's liability hereunder.

(f) If Grantee will use any subcontractor(s) to provide Services, Grantee shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Grantee as additional insureds.

### Article 11 Termination

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

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

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

11.1.3 **Failure to Comply with Representations and Warranties or Applicable Laws.** Grantee fails to perform or breaches any of the terms or provisions of Article 8 or 16.

11.1.4 **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.

11.1.5 **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.

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

**11.2 Termination for 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:

**11.2.1 Termination.** City may terminate this Agreement by giving a written termination notice to Grantee of the Event of Default and that, on the date specified in the notice, this Agreement shall terminate and all rights of Grantee hereunder shall be extinguished. In the sole discretion of the City, Grantee may be allowed ten (10) days to cure the default. In the event of termination for default, Grantee will be paid for Eligible Expenses in any Funding Request that was submitted and approved by City prior to the date of termination specified in such notice.

**11.2.2 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.

**11.2.3 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, from the date of disbursement.

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

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

**11.3.2** Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, services, equipment or other items; and

**11.3.3** Completing performance of any work that City designates to be completed prior to the date of termination specified by City.

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

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

## **Article 12 Disclosure of Information and Documents**

**12.1 Proprietary or Confidential Information of City.** Grantee understands and acknowledges that, in the performance of this Agreement or in contemplation thereof, Grantee may have access to private or confidential information that may be owned or controlled by City and that such

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

12.2 **Sunshine Ordinance.** Grantee acknowledges and agrees that this Agreement is subject to Section 67.24 of the San Francisco Administrative Code, which provides that contracts, including this Agreement, grantee's bids, responses to Requests for Proposals and all other records of communications between City and persons or entities seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in Section 67.24(e) (as it exists on the date hereof) requires the disclosure of a private person's or organization's net worth or other

proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. All information provided by Grantee covered by Section 67.24(e) (as it may be amended from time to time) will be made available to the public upon request.

**12.3 Financial Projections.** Pursuant to San Francisco Administrative Code Section 67.32, Grantee agrees upon request to provide City with financial projections (including profit and loss figures) for the activities and/or projects contemplated by this Grant ("Project") and annual audited financial statements thereafter. Grantee agrees that all such projections and financial statements shall be public records that must be disclosed.

### **Article 13 Assignment and Subcontracting**

**13.1 No Assignment by Grantee.** Grantee shall not, either directly or indirectly, assign, transfer, hypothecate, subcontract or delegate all or any portion of this Agreement or any rights, duties or obligations of Grantee hereunder without the prior written consent of City. This Agreement shall not, nor shall any interest herein, be assignable as to the interest of Grantee involuntarily or by operation of law without the prior written consent of City. A change of ownership or control of Grantee or a sale or transfer of substantially all of the assets of Grantee shall be deemed an assignment for purposes of this Agreement. Notwithstanding the foregoing, Grantee shall not need approval of City to enter into contracts consistent with its obligations to implement the HOPWA program in its jurisdiction.

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

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

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

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

### **Article 14 Independent Contractor Status**

**14.1 Nature of Agreement.** Grantee shall be deemed at all times to be an independent

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

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

14.3 **Consequences of Recharacterization.**

14.3.1 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.

14.3.2 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).

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

**Article 15 Notices**

15.1 **Requirements.** Unless otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests and other communications hereunder shall be in writing, shall be addressed to the person and address set forth below and may be sent by U.S. mail or e-mail, and shall be addressed as follows:):

To CITY: Mayor's Office of Housing and Community Development  
1 South Van Ness Avenue  
5th floor  
San Francisco, CA 94103 e-mail: [helen.hale@sfgov.org](mailto:helen.hale@sfgov.org)

To GRANTEE: COUNTY OF SAN MATEO  
STD/HIV PROGRAM  
225 37<sup>TH</sup> AVENUE PONY HI, T324  
SAN MATEO, CA 94403  
ATTN: MATT GELTMAKER e-mail: [MGeltmaker@smcgov.org](mailto:MGeltmaker@smcgov.org)

Any notice of default must be sent by registered mail or other trackable overnight mail.

15.2 **Effective Date.** All communications sent in accordance with Section 15.1 shall become effective on the date of receipt

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

## **Article 16 Compliance**

16.1 **Reserved.**

16.2 **Nondiscrimination; Penalties.**

16.2.1 **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.

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

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

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

against Grantee and/or deducted from any payments due Grantee.

**16.3 Reserved.**

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

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

**16.6 Resource Conservation; Liquidated Damages. (Reserved)**

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

**16.8 Reserved. (Requiring Minimum Compensation for Employees)**

**16.9 Reserved. (Limitations on Contributions) .**

**16.10 Reserved. (First Source Hiring Program)**

**16.11 Prohibition on Political Activity with City Funds.** In accordance with San Francisco Administrative Code Chapter 12.G, no funds appropriated by the City and County of San Francisco for this Agreement may be expended for organizing, creating, funding, participating in, supporting, or attempting to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity"). The terms of San Francisco Administrative Code Chapter 12.G are incorporated herein by this reference. Accordingly, an employee working in any position funded under this Agreement shall not engage in any Political Activity during the work hours funded hereunder, nor shall any equipment or resource funded by this Agreement be used for any Political Activity. In the event Grantee, or any staff member in association with Grantee, engages in any Political Activity, then (i) Grantee shall keep and maintain appropriate records to evidence compliance with this Section, and (ii) Grantee shall have the burden to prove that no funding from this Agreement has been used for such Political Activity. Grantee agrees to cooperate with any audit by the City or its designee in order to ensure compliance with this Section. In the event Grantee violates the provisions of this Section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement and any other agreements between Grantee and City, (ii) prohibit Grantee from bidding on or receiving any new City contract for a period of two (2) years, and (iii) obtain reimbursement of all funds previously disbursed to Grantee under this Agreement.

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

construction purposes or facilities that are partially or totally immersed in saltwater.

**16.13 Working with Minors.** In accordance with California Public Resources Code Section 5164, if Grantee, or any subgrantee, is providing services at a City park, playground, recreational center or beach, Grantee shall not hire, and shall prevent its subcontractors from hiring, any person for employment or a volunteer position in a position having supervisory or disciplinary authority over a minor if that person has been convicted of any offense listed in Public Resources Code Section 5164. In addition, if Grantee, or any subgrantee, is providing services to the City involving the supervision or discipline of minors or where Grantee, or any subgrantee, will be working with minors in an unaccompanied setting on more than an incidental or occasional basis, Grantee and any subgrantee shall comply with any and all applicable requirements under federal or state law mandating criminal history screening for such positions and/or prohibiting employment of certain persons including but not limited to California Penal Code Section 290.95. In the event of a conflict between this Section and Section 16.16, "Consideration of Criminal History in Hiring and Employment Decisions," of this Agreement, this Section shall control. Grantee shall expressly require any of its subgrantees with supervisory or disciplinary power over a minor to comply with this Section of the Agreement as a condition of its contract with the subgrantee. Grantee acknowledges and agrees that failure by Grantee or any of its subgrantees to comply with any provision of this Section of the Agreement shall constitute an Event of Default.

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

**16.15 Reserved. (Public Access to Meetings and Records)**

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

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

**16.18 Reserved. Slavery Era Disclosure.**

**16.19 Distribution of Beverages and Water.**

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

**16.19.2 Packaged Water Prohibition.** Grantee agrees that it shall not sell, provide, or otherwise distribute Packaged Water, as defined by San Francisco Environment Code Chapter 24, as

part of its performance of this Agreement.

**16.20 Reserved. (Health Care Accountability Ordinance)**

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

**Article 17 Miscellaneous**

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

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

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

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

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

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

Appendix A, Grant Plan

Appendix B Interests in Other City Contracts

Appendix C Permitted Subgrantees

Appendix D Grant Terms: Additional Requirements for Federally Funded Activities

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

**17.8 Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then

- (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and
- (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the

parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

**17.9 Successors.** The terms of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Nothing in this Agreement, whether express or implied, shall be construed to give any person or entity (other than the parties hereto and their respective successors and assigns and, in the case of Article 9, the Indemnified Parties) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

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

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

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

**17.12 Reserved. (Dispute Resolution Procedure)**

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

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

## **Article 18 Department Data and Security**

### **18.1 Management of City Data and Confidential Information.**

**18.1.1 Use of City Data and Confidential Information.** Grantee agrees to hold City's Data received from, or collected on behalf of, the City, in strictest confidence. Grantee shall not use or disclose City's Data except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City's Data outside the United States is subject to prior written authorization by the City. Access to City's Data must be strictly controlled and limited to Grantee's staff assigned to this project on a need-to-know basis only. Grantee is provided a limited non-exclusive license to use the City Data solely for performing its obligations under the Agreement and not for Grantee's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data or Confidential Information, by implication,

estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data by Grantee, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase “unauthorized use” means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

**18.1.2 Disposition of Confidential Information.** Upon request of City or termination or expiration of this Agreement, and pursuant to any document retention period required by this Agreement, Grantee shall promptly, but in no event later than thirty (30) calendar days, return all data given to or collected by Grantee on City’s behalf, which includes all original media. Once Grantee has received written confirmation from City that City’s Data has been successfully transferred to City, Grantee shall within ten (10) business days clear or purge all City Data from its servers, any hosted environment Grantee has used in performance of this Agreement, including its subcontractors environment(s), work stations that were used to process the data or for production of the data, and any other work files stored by Grantee in whatever medium. Grantee shall provide City with written certification that such purge occurred within five (5) business days of the purge. Secure disposal shall be accomplished by “clearing,” “purging” or “physical destruction,” in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

**18.2 Ownership of City Data.** The Parties agree that as between them, all rights, including all intellectual property rights, in and to the City Data and any derivative works of the City Data is the exclusive property of the City.

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

## **Article 19 Department Specific Terms**

**19.1 City Revisions to Program Budgets:** The City shall have authority, without the execution of a Formal Amendment, to purchase additional Services and/or make changes to the work in accordance with the terms of this Agreement (including such terms that require Grantee’s agreement), not involving an increase in the Compensation or the Term by use of a written City Revision to Program Budget.

**19.2 City Program Scope Reduction.** In order to preserve the Agreement and enable Grantee to continue to perform work albeit potentially on a reduced basis, consistent with obligations under the HOPWA program and their role as fiscal agent, the City shall have authority during the Term of the Agreement, without the execution of a Formal Amendment, to reduce scope, temporarily suspend the Agreement work, and/or convert the Term to month-to-month (Program Scope Reduction), by use of a written Revision to Program Budgets, executed by the Director of Health, or his or her designee, and Grantee. Grantee understands and agrees that the City’s right to effect a Program Scope Reduction is intended to serve a public purpose and to protect the public fisc and is not intended to cause harm to or penalize Grantee.

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

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

**19.5 Certification Regarding Lobbying.**

Grantee certifies to the best of its knowledge and belief that: No federally appropriated funds have been paid or will be paid, by or on behalf of Grantee to any persons for influencing or attempting to influence an officer or an 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 entering into of any federal cooperative agreement, or the extension, continuation, renewal, amendment, or modification of a federal contract, grant, loan or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any persons for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, Grantee shall complete and submit Standard Form -111, "Disclosure Form to Report Lobbying," in accordance with the form's instructions.

Grantee shall require the language of this certification be included in the award documents for all subawards at all tiers, (including subcontracts, subgrants, and contracts under grants, loans and cooperation agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**19.6 Reserved. (Emergency Response)**

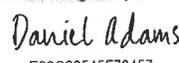
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first specified herein. The signatories to this Agreement warrant and represent that they have the authority to enter into this agreement on behalf of the respective parties and to bind them to the terms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

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

**GRANTEE: COUNTY OF SAN MATEO**

BY:   
LONDON N. BREED, Mayor

BY: 

DocuSigned by:  
  
E09C20545F78457  
BY: DANIEL ADAMS, Director  
Mayor's Office of Housing and Community  
Development

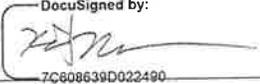
Print Name: Warren Slocum

Title: President, Board of Supervisors

APPROVED AS TO FORM:

DAVID CHIU  
CITY ATTORNEY

Federal Tax ID#: 94-6000532

DocuSigned by:  
  
7C608639D022490  
BY: KEITH NAGAYAMA  
Deputy City Attorney

City Supplier Number: 0000011478

ATTEST:

BY:  Mike Callagy  
Clerk of Said Board

SMC Resolution No. 080412

MOHCD/OEWD Grant Agreement from July 1, 2023 to June 30, 2025 \$1,768,614  
MOHCD/OEWD Grant Coordinator: Helen Hale

**\*\*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- Grant Plan

Agency Name: County of San Mateo

Project ID: 220643-23

## Grant Plan and Project Budget

Agency Name	Project Description	HOPWA Funding Amount FY 23/24
San Mateo: Mental Health Association of San Mateo	<b>STRMU</b> Short-term housing subsidies, including pre- and post-placement housing advocacy services for very low-income persons living with HIV/AIDS - 90 served	370,018.00
San Mateo: Mental Health Association of San Mateo	<b>Permanent Housing</b> HUD-defined move-in costs (e.g. deposits) for very low-income persons living with HIV/AIDS - 8 served	30,000.00
San Mateo: Mental Health Association of San Mateo	<b>Housing information</b> referrals and assistance with locating affordable/appropriate housing units for very low-income persons living with HIV/AIDS -140 served	321,951.00
San Mateo: Mental Health Association of San Mateo	<b>Project sponsor administrative expenses</b> - shouldn't be more than 7% of total	50,538.00
San Mateo: San Mateo County STD/HIV Program	<b>Support Services</b> - Assistance in gaining access to local, State and Federal government benefits and services. -400 served	106,000.00
Total		878,507.00

Agency Name	Project Description	HOPWA Funding Amount FY 24/25
San Mateo: Mental Health Association of San Mateo	<b>STRMU</b> Short-term housing subsidies, including pre- and post-placement housing advocacy services for very low-income persons living with HIV/AIDS - TBD served	TBD – working with agency to determine amount for services
San Mateo: Mental Health Association of San Mateo	<b>Permanent Housing</b> HUD-defined move-in costs (e.g. deposits) for very low-income persons living with HIV/AIDS - TBD served	TBD – working with agency to determine amount for services
San Mateo: Mental Health Association of San Mateo	<b>Housing information</b> referrals and assistance with locating affordable/appropriate housing units for very low-income persons living with HIV/AIDS -TBD served	TBD – working with agency to determine amount for services
San Mateo: Mental Health Association of San Mateo	<b>Project sponsor administrative expenses</b> - shouldn't be more than 7% of total	TBD – working with agency to determine amount for services
San Mateo: San Mateo County STD/HIV Program	<b>Support Services</b> - Assistance in gaining access to local, State and Federal government benefits and services. –TBD served	TBD – working with agency to determine amount for services
Total		890,107.00

Program Monitoring process to be determined through collaborative agreement between MOHCD and San Mateo related to HUD grant regulations and document review.

**Appendix B - Interests in Other City Contracts**

City Department or Commission	Date of Contract	Amount of Contract
CID#1000029018 (AIR)	07/01/2023 – 05/31/2028	\$7,000,000
CID#1000028263 (DEM)	11/01/2022 – 12/31/2023	\$6,514,408
CID#1000028084 (DEM)	11/01/2022 – 12/31/2023	\$857,633
CID#1000027897 (DPH)	01/13/2023 – 01/12/2025	\$50,094
CID#1000026846 (MYR)	07/01/2022 – 06/30/2023	\$832,116
CID#1000025589 (PUC)	07/01/2022 – 06/30/2023	\$150,000
CID#1000024681 (DEM)	11/01/2021 – 07/31/2023	\$863,389
CID#1000024539 (DEM)	11/01/2021 – 12/31/23	\$7,323,991
CID#1000020992 (AIR)	11/10/2020 – 11/09/2026	\$2,000,000
CID#1000020850 (DEM)	11/01/2020 – 05/31/2023	\$6,597,740
CID#1000019840 (ADP)	05/28/2020 – 06/30/2024	\$100,000
CID#1000016727 (AIR)	07/01/2019 – 06/30/2024	\$1,100,000
CID#1000011848 (AIR)	07/01/2018 – 06/30/2023	\$5,800,000

### Appendix C--Permitted Subgrantees

Subgrantee Name
Mental Health Association of San Mateo County

**Appendix D**  
**Grant Terms: Additional Requirements for Federally Funded Activities**

**I. Funding Source(s) Information:**

<b>Funding Source Name</b>	<b>2023 HOPWA</b>	<b>2021 HOPWA</b>
<b>Total Amount Granted by this Agreement</b>	\$195,980	\$682,527
<b>Total Amount Granted by Fund Source</b>	\$195,980	\$682,527
<b>Federal Award Identification Number (FAIN)</b>	CAH23F003	CAH21F003
<b>Federal Award Date</b>	July 1, 2023	July 1, 2021
<b>Total Amount of the Federal Award</b>	\$7,410,761.00	\$7,041,373.00
<b>Federal Award Project Description</b>	Housing Opportunities for Persons With AIDS program for the San Francisco EMSA for program year 2023-2024 for housing and supportive services for people living with HIV/AIDS	Housing Opportunities for Persons With AIDS program for the San Francisco EMSA for program year 2021-2022 for housing and supportive services for people living with HIV/AIDS
<b>Federal Awarding Agency</b>	U.S. Department of Housing and Urban Development	U.S. Department of Housing and Urban Development
<b>CFDA Number and Name</b>	14-241: Housing Opportunities for Persons With AIDS	14-241: Housing Opportunities for Persons With AIDS
<b>Award for R&amp;D?</b>		
<b>Indirect Cost Rate for the Federal Award</b>		
<b>Negotiated Maximum Indirect Cost Rate between MOHCD/OEWD and Agency</b>	10.00%	10.00%

**1. General**

The Grantee agrees to abide by 24 C.F.R. Part 58, Part 92, Part 570, Part 574, and Part 576, as the same may be modified, supplanted or supplemented from time to time, including but not limited to all requirements and limitations relating to standards and cost reasonableness for procurement of goods and services. The 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. The Department will make available to the Grantee additional copies of each of these documents at the Department's offices.

**2. Disbursements**

(b) City will disburse payment to Grantee for eligible costs incurred by Grantee on a cost-reimbursement basis in conformance with all the terms of this Agreement and with the provisions of Office of Management and Budget ("OMB") Uniform Guidance requirements in 2 C.F.R. Part 200.

**3. Use of Funds**

Under no circumstances shall the Grant be used for any of the following:

- (i) Costs listed as ineligible in OMB Uniform Guidance requirements in 2 C.F.R. Part 200; or
- (ii) To replace non-federal contributions, loans or grants required by any agreement with any federal or federally-funded agency.

#### 4. **Implementation of Grant Plan.**

- (a) The Grantee shall abide by all existing and future applicable federal laws and regulations, including HUD and Council on Environmental Quality Regulations as they may be amended, from time to time, pertaining to the Project and to third person contracts relating to the Project of Work. In the event that HUD amends, waives, or repeals any HUD administrative regulation previously applicable to Grantee's performance under this Agreement, MOHCD expressly reserves the right to require performance of Grantee as though the regulation were not amended, waived or repealed, subject only to written and binding objection by HUD.
- (b) The Work Program for direct services must be intended to either maintain services that are currently funded with HOPWA or increase the level of services currently provided by Grantee.
- (c) No person providing services under a subcontract with Grantee will receive more than a reasonable rate of compensation for such services paid with the Grant Amount, which amount shall not exceed, on a daily basis, the maximum daily rate of compensation for a GS-18 employee as established by federal law. Adjustments of eligible costs for such services may be made where audit and monitoring reviews indicate that the rates of compensation were not reasonable or exceeded the maximum permissible rates. Services provided under an independent contractor relationship is governed by the Procurement Standards set forth in 2 C.F.R. Part 200 and is not subject to the GS-18 limitation.

#### 5. **Records and Audits.**

- (a) If Grantee cumulatively expends \$750,000.00 or more in federal funds in a year, it must conduct an independent audit and submit a copy of the audit report to MOHCD. The audit shall be performed by an independent auditor in accordance with OMB Uniform Guidance requirements in C.F.R. Title 2, Subtitle A, Chapter II, Part 200, Subpart D §200.510, as it may be amended from time to time.
- (b) During the term, and for a period of five (5) years after expiration of the term, Grantee shall also create and maintain records that include the following information: (i) records demonstrating that each activity undertaken meets HOPWA program-specific requirements; and (ii) financial information as required by 24 C.F.R. Part 574.530 for HOPWA grants. All records shall be maintained in accordance with OMB Uniform Guidance requirements in 2 C.F.R. Part 200 and HUD regulations, as applicable. All records shall be maintained in a manner that, in Department's reasonable judgment, will provide an effective system of internal control and will permit timely and effective audits as required by this Agreement, and for federal Funding Sources, all such records shall also be maintained in accordance with OMB Uniform Guidance requirements in 2 C.F.R. Part 200.

#### 6. **Non-Discrimination**

- (a) The Grantee agrees to comply with the following laws and statutes relating to nondiscrimination: Titles VI and VII of the Civil Rights Act of 1964 (Pub. L. 88-352), Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), Section 109 of the Housing and Community Development Act of 1974 (24 U.S.C. Section 5409), and Executive Order 11246, as amended by Executive Order 11375 and supplemented by Department of Labor regulations (41 C.F.R. Part 60) regarding equal employment opportunity.
- (b) The Grantee agrees to post in conspicuous places available to employees and applicants for employment, to place in all solicitations or advertisements for employment, and to send to each labor union or representative of its employees, notices setting forth the Grantee's nondiscriminatory practices as required hereunder.
- (c) The Grantee shall allow MOHCD and HUD access to all of its books and records to ascertain compliance with this section. In the event of Grantee's noncompliance with the nondiscrimination provisions of this Agreement, this Agreement may be cancelled, terminated or suspended in whole or in part and the Grantee may be declared ineligible for further government contracts.
- (d) The Grantee shall include these nondiscrimination provisions in every subcontract or purchase order unless exempted by Executive Order 11246 so that this section will be binding on each subgrantee or vendor. The Grantee shall take such action with respect to the subcontractor or purchase order as MOHCD and/or HUD may direct to enforce such provisions, including sanctions.

(e) The Contractor certifies that it does not maintain nor provide for its employees any segregated facilities, and it does not permit its employees to perform services at any location where segregated facilities are maintained. As used herein, the term “segregated facilities” means any areas, which are segregated on the basis of race, creed, color or natural origin, because of habit, local custom or otherwise.

## **7. Section 3 Requirements**

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

(a) 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 very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(b) 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.

(c) To send to each labor organization or representative of workers with which the grantee has a collective bargaining agreement or other similar understanding, if any, a notice advising the labor organization of workers representative of the 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.

(d) To include a Section 3 clause similar to this section 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. The grantee shall not subcontract with any subcontractor where the Grantee has notice or knowledge that the subcontractor has been found in violation of the Part 135 Regulations.

(e) To certify that any vacant employment positions, including training positions, that are filled (1) after a Grantee 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 Grantee's obligations under the Part 135 Regulations.

(f) The 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.

## **8. Federal Drug-Free Workplace Act**

The 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 the Grantee’s premises. The Grantee agrees that any violation of this prohibition by the Grantee, its employees, agents or assigns will be deemed a material breach of this agreement.

## **9. Environmental Review and Lead Based Paint**

The Grantee agrees to comply with the statutory and regulatory authorities listed at 24 CFR §§58.5 and 58.6 and HUD’s lead based paint regulations at 24 CFR §570.608 et seq.

## **10. Conflict of Interest**

In accordance with OMB conflict of interest provision set forth in Uniform Guidance requirements in C.F.R. Title 2, Subtitle A, Chapter II, Part 200, Subpart D §200.318, Grantee shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent of Grantee shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which

employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of Grantee shall neither solicit nor accept gratuities, favors, or anything of monetary value from Grantees, or parties to sub-agreements. However, Grantee may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Grantee.

#### **11. Compliance with Lobbying Provisions**

In addition to, and not in substitution for, other provisions of this agreement, the Grantee agrees to the following provisions pursuant to the Housing and Community Development Act of 1992:

(a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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.

(b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(c) 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.

(d) The Grantee shall require that the language of this section be included in all 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.

#### **12. Labor Standards**

The Grantee agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act, the Safety Standards Act, the Copeland "Anti-Kickback" Act (40 U.S.C. 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.

#### **13. Suspension or Disbarment**

The Grantee represents and warrants that it has not been suspended, disciplined or disbarred by, or prohibited from contracting with, the U.S. General Services Administration or any federal, state or local governmental agency. In the event the Grantee has been so suspended, disbarred, disciplined or prohibited from contracting with any governmental agency, it shall immediately notify the City of same and the reasons therefore together with any relevant facts or information requested by MOHCD. Any such suspension, disbarment, discipline or prohibition may result in the termination or suspension of this Agreement. Grantee acknowledges that this certification of eligibility to receive federal and City funds is a material term of the Agreement.