

**2012-2013 MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO,
by and through its
MAYOR'S OFFICE OF HOUSING
AND
THE COUNTY OF SAN MATEO**

**U.S. Department of Housing and Urban Development
Housing Opportunities for Persons With AIDS (HOPWA) Program**

This Memorandum of Understanding ("MOU") is made and entered into as of July 1, 2012, by and between the City and County of San Francisco ("City"), a municipal corporation, acting by and through the City's Mayor's Office of Housing ("MOH"), and the County of San Mateo, a municipal corporation.

RECITALS

- A. The National Affordable Housing Act (Public Law 101-625, approved November 28, 1990, hereinafter referred to as the "Act") authorized the Housing Opportunities for Persons with AIDS Program ("HOPWA") to provide states and localities with the resources and incentives to devise long-term comprehensive strategies for meeting the housing needs of persons with Acquired Immune Deficiency Syndrome ("AIDS") and related diseases.
- B. The Act authorized entitlement grants under the HOPWA Program for the San Francisco Eligible Metropolitan Statistical Area ("EMSA"), with Marin, San Francisco and San Mateo Counties comprising the San Francisco EMSA.
- C. The Community Development Block Grant communities in the San Francisco EMSA were required to designate a single unit of general local government to administer the HOPWA Program on behalf of the EMSA, and the City was so designated, and MOH is the lead agency on behalf of the City.
- D. As part of the Consolidated Planning process, MOH submitted San Francisco's 2012-2013 Action Plan to the U.S. Department of Housing and Urban Development ("HUD") on May 15, 2012. The 2012-2013 Action Plan included a funding request under the HOPWA entitlement program (in collaboration with Marin and San Mateo Counties).
- E. Since 1993, the City and the County of San Mateo have entered into annual Memorandums of Understanding to provide for the disbursements of HOPWA funds.
- F. On May 8, 2012, the San Francisco Board of Supervisors passed a resolution approving the 2012-2013 HOPWA program, which includes an Expenditure Schedule that allocates \$873,900 in HOPWA funding to the County of San Mateo. The Expenditure Schedule for the County of San Mateo is in Exhibit A, attached to and incorporated in this MOU.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. The County of San Mateo shall provide for the delivery of services to low-income individuals and households with HIV/AIDS, as set forth in Exhibit A, attached to and incorporated in this MOU. When used in this MOU, the term "low-income" shall have the meaning provided in the AIDS Housing Opportunity Act (42 U.S.C. 12902).
2. MOH, pursuant to the HOPWA allocation as approved by HUD, and subsequent to final allocation by HUD, has allocated to the County of San Mateo a total amount of \$873,900 in Fiscal Year 2012-2013 HOPWA

funds. Funds are to be expended as described in this MOU and in no event, shall the allocated amount be exceeded unless an amendment to this MOU provides otherwise. MOH shall make payments from the allocated amount pursuant to the terms and conditions set forth in Exhibit B, attached to and incorporated in this MOU. Any funds not expended by June 30, 2013 shall be retained by MOH.

3. This MOU has a 12-month term beginning July 1, 2012 and ending June 30, 2013.

4. MOH shall not reimburse for, and the County of San Mateo shall not request reimbursement for, services provided prior to or after the term of this MOU.

5. The County of San Mateo shall maintain on a current basis complete records, including books of original entry, source documents supporting accounting transactions, eligibility and service records as may be applicable, a general ledger, personnel and payroll records, canceled checks, and related documents and records to assure proper accounting of funds and performance of this MOU in accordance with instructions provided and to be provided by MOH. Said instructions may include requirements as to the length of time such records are to be retained. The County of San Mateo will cooperate with MOH in the preparation of, and will furnish any and all information required for reports to be prepared by MOH as may be required by the rules, regulations, or requirements of the MOH or of any other governmental entity. To the extent permitted by law, MOH will also permit access to all books, accounts, or records of any kind to the County of San Mateo or to any other governmental entity for purposes of audit or investigation, in order to ascertain compliance with the provisions of this MOU.

6. The County of San Mateo shall maintain, at all times during the term of this MOU, the insurance and bonding documentation described in Exhibit C to this MOU, attached to and incorporated in this MOU, and shall comply with all requirements set forth in that Exhibit.

7. The County of San Mateo agrees to defend, indemnify and hold harmless the City, its officers, employees and agents, from any and all acts, claims, omissions, liabilities and losses by whomever asserted arising out of negligent acts or omissions of the County of San Mateo in the performance of this MOU except those arising by reason of the sole negligence of the City, its officers, employees and agents.

8. The City agrees to defend, indemnify and hold harmless the County of San Mateo, its officers, employees and agents, from any and all acts, claims, liabilities and losses by whomever asserted arising out of negligent acts or omissions of the City in its obligations under this MOU except those arising by reason of the sole negligence of the County of San Mateo, its officers, employees and agents.

9. In the event of concurrent negligence of the City, its officers, employees and agents, and the County of San Mateo and its officers, employees and agents, the liability for any and all claims for injuries or damages to persons and/or property shall be apportioned under the California theory of comparative negligence as presently established or as may hereafter be modified.

10. The County of San Mateo shall not claim reimbursement from the City for or apply sums received from MOH with respect to that portion of its obligations which has been or will be paid by another source of revenue.

11. None of the work to be performed by the County of San Mateo shall be subcontracted without the prior written consent of MOH. The County of San Mateo shall be as fully responsible to the City under this MOU for the acts and omissions of any subcontractors, and of persons either directly or indirectly employed by them, as the County of San Mateo is for the acts and omissions of persons directly employed by it. The County of San Mateo shall not transfer any interest in this MOU (whether by assignment or novation) without the prior written approval of MOH. No party shall, on the basis of this MOU, in any way contract on behalf of, or in the name of, the other party to the MOU, and any attempted violation of the provisions of this paragraph shall confer no rights, and shall be void and a default.

12. Neither the County of San Mateo nor any of its employees shall by virtue of this MOU be an employee of the City for any purpose whatsoever, nor shall it or they be entitled to any of the rights, privileges, or benefits of the City employees. The County of San Mateo shall be deemed at all times an independent contractor and shall be wholly responsible for the manner in which it performs the services required of it by the terms of this MOU. The

County of San Mateo assumes exclusively the responsibility for the acts of its employees as they relate to the services to be provided during the course and scope of their employment.

13. Subject to applicable laws requiring the public disclosure of information, the County of San Mateo agrees to maintain the confidentiality of any information provided by the City to the County of San Mateo under this MOU. If the County of San Mateo determines that an applicable law requires the public disclosure of information acquired from the City, the County of San Mateo shall promptly provide MOH advance notice of its intent to disclose. The County of San Mateo shall provide notice to the following person by telephone call and e-mail:

Brian Cheu, Director of Community Development, Mayor's Office of Housing, 415-701-5584,
brian.cheu@sfgov.org

Subject to applicable laws requiring the public disclosure of documents, the City shall maintain the confidentiality of information provided by the County of San Mateo to the City under this MOU. If the City determines that an applicable law requires the public disclosure of information acquired from the County of San Mateo, the City shall promptly provide the County of San Mateo advance notice of its intent to disclose. The City shall provide notice to the following person by telephone call and e-mail:

Matthew Geltmaker, County of San Mateo, STD/HIV Program, 650-573-2077, mgeltmaker@smcgov.org

Either party may change the person, telephone number or e-mail to which notice under this section must be sent by giving 3 days' advance written notice to the other party in accordance with Section 22 below.

14. If, through any cause, the County of San Mateo shall fail to fulfill in timely and proper manners its obligations under this MOU, or if the County of San Mateo shall violate any of the covenants, terms or conditions of this MOU, the Mayor's Office of Housing shall thereupon have the right to terminate this MOU by giving at least thirty (30) days advance written notice to the County of San Mateo.

Without prejudice to the foregoing, the County of San Mateo agrees that at anytime, before or after the termination or expiration of this MOU, upon any final or interim audit by MOH, or by other evidence showing amounts owed by the County of San Mateo to the City, the County of San Mateo shall immediately bring itself into compliance and shall immediately pay to MOH whatever sums are so disclosed by the audit or otherwise to be due to the City, or shall, at MOH's election, permit MOH to deduct such sums from whatever amounts remain undisbursed by MOH to the County of San Mateo pursuant to this MOU.

15. The County of San Mateo shall comply with all applicable laws, ordinances, and codes of Federal, State, and local governments in performing any of the work under this MOU.

16. The County of San Mateo shall retain any property acquired with funds under this MOU as long as there is a need for the property to accomplish the purpose of the program whether or not the program continues to be supported by MOH/HOPWA funds. For disposition of any property having a useful life of more than one year and an acquisition cost of \$500 or more, the County of San Mateo shall request disposition instructions from MOH. All personal property acquired with funds pursuant to this MOU shall be acquired in compliance with Office of Management and Budget Circular A-110, Attachment A - Property Standards.

17. If any adjustment in line items in the budget, which is part of Exhibit A of this MOU, is requested by the County of San Mateo, such adjustment may be made upon receipt by the County of San Mateo of the written approval of the Director of MOH and in accordance with any conditions stated in that approval. Such budget adjustment shall not alter (1) the basic scope of services or other performance to be provided under this MOU, (2) the time of performance of any act hereunder, or (3) the total amount of money allocated hereunder.

18. The County of San Mateo agrees that in the event HUD or any other federal agency orders the return of funds granted to the EMSA under the HOPWA program, the County of San Mateo will return to the EMSA such funds as are required to comply with the directive from HUD or other federal agency.

19. The County of San Mateo shall identify funding priorities, select project sponsors to carry out eligible

activities, prepare subcontracts with project sponsors, provide the Mayor's Office of Housing with information necessary for HUD to perform any required environmental review, operate the program in accordance with the requirements of the applicable federal regulations, including, but not limited to, OMB Circulars A-110, A-122, and A-133, conduct an ongoing assessment of the housing assistance and supportive services required by the participants of the program, assure the adequate provision of supportive services to the participants in the program, and comply with all regulations, requirements and procedures including recordkeeping and reports for program monitoring and evaluation purposes, as HUD may establish for purposes of carrying out the program in an effective and efficient manner, including but not limited to the HOPWA regulations at 24 C.F.R. Part 574.

20. The County of San Mateo agrees that no person in the United States shall, on the grounds of race, color, religion, national origin or ancestry, gender identity, sex, marital or domestic partner status, disability (including AIDS or HIV status), age or sexual orientation, in the performance of this MOU be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available to the County of San Mateo by the Mayor's Office of Housing pursuant to this MOU.

21. The County of San Mateo shall submit all invoices for reimbursement under this MOU within forty five (45) days after the end date of the MOU. MOH shall have the sole and absolute discretion to decide whether to approve invoices submitted after forty five (45) days following the termination or expiration of this MOU.

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

If to the City:

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

If to County of San Mateo:

County of San Mateo, STD/HIV Program
225 37th Avenue
San Mateo, CA 94403
Attn: Matthew Geltmaker
Facsimile No. 650-573-2875

23. This MOU 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 MOU.

IN WITNESS WHEREOF, the parties have caused this MOU to be executed as of the date first written above.

CITY AND COUNTY OF SAN FRANCISCO, a municipal COUNTY OF SAN MATEO
corporation, by and through the
MAYOR'S OFFICE OF HOUSING

BY: _____
OLSON LEE
DIRECTOR, MAYOR'S OFFICE OF HOUSING

BY: _____
PRESIDENT OF BOARD OF SUPERVISORS

ATTEST:

BY: _____
CLERK OF SAID BOARD

APPROVED AS TO FORM:

DENNIS J. HERRERA
CITY ATTORNEY

BY: _____
Robert A. Bryan
Deputy City Attorney

EXHIBIT A

A. Rental Assistance Program

1. Housing Assistance Program Scattered Sites in San Mateo	210 very low-income persons, as defined by HUD, living with HIV/AIDS will be assisted with short-term housing subsidies for the purpose of providing decent affordable housing.	\$272,719
2. Housing Assistance Services 2686 Spring Street, Redwood City	210 very low-income persons, as defined by HUD, living with HIV/AIDS will be assisted with pre- and post-placement housing advocacy services for the purpose of obtaining and maintaining decent affordable housing.	\$277,325
3. Housing Assistance Services 2686 Spring Street, Redwood City	20 very low-income persons, as defined by HUD, living with HIV/AIDS will be provided with HUD-defined move-in costs (e.g., deposits) for the purpose of obtaining decent affordable housing.	\$40,000
Subtotal		\$590,044

B. Supportive Services

1. Case Management: San Mateo Co. STD/HIV Program 225 37 th Avenue, San Mateo	150 very low-income persons, as defined by HUD, living with HIV/AIDS will have access to comprehensive case management and community based services for the purpose of creating suitable living environments and avoiding homelessness.	\$117,104
2. Benefits Counseling: San Mateo Co. STD/HIV Program 225 37 th Avenue, San Mateo	225 very low-income persons, as defined by HUD, living with HIV/AIDS will have access to benefits counseling services for the purpose of creating suitable living environments.	\$95,987
Subtotal		\$213,091

C. Project Sponsor Administrative Expenses (Limited to 7% of awarded funds)

1. Mental Health Association of San Mateo 2686 Spring Street, Redwood City	Sponsor of Housing Assistance Program and related Supportive Services.	\$41,303
2. San Mateo Co. STD/HIV Program 225 37 th Avenue, San Mateo	Sponsor of case management and benefits counseling program.	\$3,245
Subtotal		\$44,548

D. Grantee Administrative Expenses

San Mateo County AIDS Program 225 37 th Avenue, San Mateo	Grantees are limited to 3% of awarded funds for administration costs.	\$26,217
Subtotal		\$26,217
Total – San Mateo County		\$873,900

EXHIBIT B

TERMS AND CONDITIONS FOR PAYMENT

1. The County of San Mateo shall provide to the Mayor's Office of Housing quarterly invoices for services provided pursuant to this MOU, no later than forty-five (45) days after the end of each quarter. The invoices shall reflect the services provided during the preceding quarter, using an invoice format acceptable to the Mayor's Office of Housing. The County of San Mateo shall send all invoices to:

Gloria Woo, Director of Compliance and Data Analysis
Mayor's Office of Housing
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

2. The Mayor's Office of Housing shall remit payment to the County of San Mateo within thirty (30) working days of receipt of each complete invoice.

EXHIBIT C
INSURANCE REQUIREMENTS

1. Types and Amounts of Coverage

The County of San Mateo shall maintain in force, during the full term of this MOU, insurance in the following amounts and coverages:

- (a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than one million dollars (\$1,000,000) each accident, injury, or illness.
- (b) Commercial General Liability Insurance with limits not less than one million dollars (\$1,000,000) each occurrence, \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.
- (c) Commercial Automobile Liability Insurance with limits not less than one million dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- (d) Fidelity Bond or Crime Policy with limits of \$873,900 covering all officers and employees for employee dishonesty, embezzlement, forgery, robbery, securities.
- (e) **(If professionals are used as part of the MOU)** Professional Liability Insurance for negligent acts, errors or omission with respect to professional or technical services, if any, required in the performance of this MOU with limits not less than one million dollars (\$1,000,000) each claim.
- (f) **(If grant funds are used for the purchase or improvement of real property)** Property Insurance covering all real property constructed, improved, rehabilitated or purchased in whole or in part with grant funds, in form appropriate for the nature of such property, covering all risks of loss, excluding earthquake and flood, for 100% of the reconstruction value (brought up to current codes), with deductible, if any, acceptable to the Mayor's Office of Housing, and naming the Mayor's Office of Housing of the City and County of San Francisco as loss payee, as its interest may appear, except that if the County of San Mateo leases the real property that is constructed, improved or rehabilitated with grant funds, such coverage with respect to the leased property may be provided by the owner or landlord. The County of San Mateo shall maintain the property insurance during the full term of this MOU and the Tenure Period, as defined in the HOPWA regulations at 24 C.F.R. 574.310(c).

2. Additional Requirements for General and Automobile Coverage

Commercial General Liability and Commercial Automobile Liability insurance policies shall:

- (a) Name as additional insured the Mayor's Office of Housing, the City and County of San Francisco, and its officers, agents and employees.
- (b) Provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this MOU, and that insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to limits of liability.

3. Additional Requirements for All Policies

All insurance policies required to be maintained by the County of San Mateo shall be endorsed to provide thirty (30) days' prior written notice of cancellation for any reason, reduction in coverage, or intended nonrenewal to the County of San Mateo and the Mayor's Office of Housing. Notice to the Mayor's Office of Housing shall be

mailed to the following address:

Mayor's Office of Housing
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
Attn: Director

The County of San Mateo's compliance with the insurance requirements hereunder shall in no way reduce, affect or relieve the County of San Mateo's indemnification and other obligations hereunder.

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

4. Required Post-Expiration Coverage

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

5. General Annual Aggregate Limit/Inclusion of Claims Investigation or Legal Defense Costs

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

6. Evidence of Insurance

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

7. Effect of Approval

Approval of any insurance by the Mayor's Office of Housing shall not relieve or decrease the liability of the County of San Mateo hereunder.

8. Insurance for Subcontractors and Evidence of this Insurance

If a subcontractor will be used to complete any portion of this MOU, the County of San Mateo shall ensure that the subcontractor shall provide all necessary insurance and shall name the Mayor's Office of Housing, the City and County of San Francisco, its officers, agents, and employees and the County of San Mateo as additional insureds.

9. Bonding for Construction Contracts

Prior to the release of any of the grant funds for the construction or improvement of facilities, the County of San Mateo must enter into a contract with a contractor wherein the County of San Mateo shall explicitly retain an

amount equal to or greater than 10% (as determined by mutual MOU between the County of San Mateo and the Mayor's Office of Housing) of the total construction cost until completion of the entire contract, and each progress payment during construction shall retain the required percentage of the cost of the work covered by that payment. The final payment to the contractor shall be made only following the Mayor's Office of Housing's written approval, which approval may be withheld pending recordation of a valid notice of completion, receipt of an architect's certification of substantial completion, receipt of appropriate lien waivers or releases, and such additional reasonable requirements as the Mayor's Office of Housing may determine. Prior to the release of any of the grant funds for the construction or improvement of facilities expected to cost between \$20,000 and \$100,000, the Mayor's Office of Housing may require the County of San Mateo or contractor to post a performance bond and a labor and material payment bond, in a form approved by the Mayor's Office of Housing, in amounts not less than 100% of the contract price for the work. For all contracts exceeding \$100,000, the contractor must provide a performance bond and a labor and material payment bond equal to 100% of the contract price for the work.

10. Construction Contractor's Insurance

A. The County of San Mateo must require that the construction contractor maintain, throughout the term of the construction contract, insurance as follows:

1. Workers' Compensation Insurance at statutory limits, including coverage for Employers' Liability, with limits not less than one million dollars (\$1,000,000) each accident, injury, or illness;
2. Commercial General Liability Insurance with limits not less than one million dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations;
3. Commercial Automobile Liability Insurance with limits not less than one million dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable; and
4. Builder's All Risk Insurance for loss or damage to the work in progress for the amount of the contract.

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

11. Professional Liability Insurance for Construction Contracts

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

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

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