

**GRANT AGREEMENT**  
**BY AND BETWEEN**  
**THE CITY AND COUNTY OF SAN FRANCISCO**  
**AND**  
**DATED AS OF**  
**July 1, 2007**

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1 - Project Budget (attached to Short Form Agreement, defined in the Recitals)

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G - First Source Hiring Agreement (if applicable, attached to Short Form Agreement)

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**GRANT AGREEMENT  
COMMUNITY DEVELOPMENT ACTIVITIES**

This Agreement, dated as of **July 1, 2007**, is between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "City"), represented by the Mayor, acting through the Community Development Director of the Mayor's Office of Housing ("MOH"), and THE CORPORATION ("Corporation") organized under the nonprofit corporation law of the State of California.

**RECITALS:**

- A. The City has entered into a Grant Agreement with the United States Department of Housing and Urban Development ("HUD") to receive Community Development Block Grant ("CDBG") funds and Emergency Shelter Grant Program ("ESGP") funds, and to administer the distribution of the CDBG funds pursuant to Title I of the Housing and Community Development Act of 1974, as amended, and the ESGP funds pursuant to the McKinney Homeless Assistance Act, as amended.
- B. Under the above Acts and the City-HUD Grant Agreement, the City is authorized to distribute CDBG Funds and ESGP Funds (collectively, the "Funds") to certain neighborhood-based nonprofit corporations for the specific and special purpose of achieving the goals of the City's Community Development Program.
- C. The Corporation has been duly formed as a private nonprofit corporate entity pursuant to the provisions of the Nonprofit Corporation Law of the State of California to conduct community development activities in the City and County of San Francisco.
- D. The Board of Supervisors of the City and County of San Francisco (the "Board of Supervisors") has enacted Resolution No. **0277-06** authorizing the Mayor to apply for, receive and administer the distribution of the 2006/2007 CDBG Entitlements from HUD for activities to be performed in accordance with the Statement and Expenditure Schedules identified as the 2006/2007 San Francisco CDBG Program on file with the Clerk of the Board of Supervisors ("CDBG Program").
- E. The Board of Supervisors has enacted Resolution No. **0277-06** authorizing the Mayor to apply for, receive and administer the distribution of the 2006/2007 ESGP Entitlements from HUD for activities to be performed in accordance with the Statement and Expenditure Schedules identified as the 2006/2007 San Francisco ESGP Program on file with the Clerk of the Board of Supervisors ("ESGP Program"; together with the CDBG Program, the "MOH Program").
- F. Pursuant to above-mentioned Resolutions, the Board of Supervisors approved a maximum allocation for the Corporation to perform specific community development activities identified in the MOH Program to principally benefit low and moderate-income residents of the City and County of San Francisco.
- G. The City and the Corporation have executed a short form grant agreement that incorporates all of the terms and provisions hereof (the "Short Form Agreement").

**AGREEMENT**

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

**ARTICLE ONE: SCOPE OF SERVICE**

**Section 1.01 - Corporation Work Program**

- A. The Corporation shall use the Funds distributed by the City under this Agreement to perform the activities described in the Corporation's Work Program(s) attached to the Short Form Agreement as Appendix C1-C3 (the "Work Program(s)") in accordance with the Project Budget attached hereto as Schedule 1 (the "Project Budget"). The Corporation shall not use the Funds for any other purpose. The Work Program must be intended to maintain or increase the level of services currently provided by the Corporation to low and moderate-income persons. In the event there is more than one Work Program attached, there is a separate Project Budget for each such Work Program and the

Corporation shall administer and maintain records for each Work Program separately. In no event shall there be any transfer of Funds from one Work Program to the other. All the provisions and terms of this Agreement shall apply with respect to each Work Program and Project Budget, and each reference to the Work Program or Project Budget shall include the singular and/or the collective, as appropriate. In the event of a breach of this Agreement with respect to any one or more of the attached Work Programs, MOH shall have the right to suspend or terminate this Agreement as to all the Work Programs.

B. The Corporation shall (i) diligently and expeditiously administer and implement the Work Program in accordance with the Project Budget, (ii) fully and faithfully perform all duties and tasks necessary to meet the goals set forth in the Work Program, and (iii) adhere to all current and future operating policies and procedures promulgated by the City under the MOH Program, including those set forth in MOH's Operating Procedures Manual and/or Bidding and Contracting Manual previously delivered to the Corporation and incorporated herein by this reference, as the same may be updated or amended from time to time.

C. The Corporation shall abide by all existing and future applicable federal laws and regulations, including HUD and environmental regulations, as they may be amended, from time to time, pertaining to the Work Program and to third person contracts or agreements relating to the Work Program. In the event HUD amends, waives, or repeals any HUD administrative regulation previously applicable to Corporation's performance under this Agreement, MOH expressly reserves the right to require performance of Corporation as though the regulation were not amended, waived or repealed, subject only to written and binding objection by HUD. Prior to constructing any physical improvements using the Grant Amount, the Corporation shall forward to the City a copy of any required environmental approvals, determinations, negative declaration exemptions or the like.

D. The Corporation may, subject to the prior written approval of the MOH, subcontract parts of the Annual Work Program as may be necessary to accomplish its objectives; provided, however, any such subcontract shall comply with all the requirements set forth herein.

E. The Corporation acknowledges the importance of the public's understanding of CDBG and ESGP efforts. The Corporation agrees to identify and publicize newsworthy program accomplishments and activities, and to acknowledge CDBG and/or ESGP involvement if and when appropriate and possible. In addition, the Corporation shall credit MOH, and CDBG or ESGP as applicable, in all publications, press releases, brochures, and other material resulting from activities, events, projects or programs supported with the Funds. If a CDBG project, this acknowledgment should identify the project as: "Funded by the Mayor's Office of Housing through the Community Development Block Grant Program." If an ESGP project, this acknowledgment should identify the project as: "Funded by the Mayor's Office of Housing through the Emergency Shelter Grant Program."

F. The Corporation shall, upon request or as appropriate, prepare and make public presentations or conduct public meetings or hearings relative to the accomplishments of the Work Program. The Corporation agrees to promptly comply with any request by MOH to conduct such presentations or meetings in response to MOH or community concerns relating to the Work Program.

### **Section 1.02 - MOH Funding**

A. As consideration for the Work Program to be performed by the Corporation in accordance with this Agreement, the City will make available to the Corporation a sum not to exceed the Grant Amount as set forth in the Short Form Agreement (the "Grant Amount"). The Corporation agrees that Funds disbursed under this Agreement shall be used solely and strictly in accordance with the terms of this Agreement. The Corporation acknowledges and agrees that the availability of Funds allocated under this Agreement is expressly conditioned on the Corporation fulfilling all the provisions of the Work Program in accordance with the Project Budget.

### **Section 1.03 - Other Funding**

A. The Corporation shall actively seek non-CDBG funding sources to fund operating costs and cost overruns of the Work Program, to assure continuity and eligibility of the Work Program, and to provide regular maintenance and repair to any facility or equipment. If the Work Program involves construction and the total Work Program costs exceed the Grant Amount, the City may condition approval of any construction contract and/or disbursement of any portion of the Grant Amount upon the provision of satisfactory evidence of the availability of funds to cover such shortfall.

B. For Work Programs that include construction or renovation activity, the Corporation acknowledges that Funds provided under this Agreement are to be used to perform capital improvements, and that such Funds may not be used for

subsequent repairs or improvements to the facility following completion of the Work Program. To fund such subsequent work, the Corporation shall establish an adequate building repair and maintenance program, subject to review and approval by the City that preserves and enhances the life expectancy of the improvements. This may include seeking monies from other sources to establish a building repair/maintenance reserve fund to cover future improvements. No CDBG or ESGP monies may be used to fund such reserves.

## **ARTICLE TWO: BUDGET AND PAYMENT**

### **Section 2.01 - Budget**

- A. The City will distribute the Grant Amount to the Corporation for eligible costs incurred by the Corporation 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”) Circular A-122.
- B. This Agreement is subject to the budget, fiscal and other provisions of the City's Charter. The City’s obligation to begin disbursement of the Grant Amount hereunder shall commence only after the City’s receipt of funds from HUD and the certification of funds under this Agreement by the City's Controller. All other sections of this Agreement notwithstanding, the City's obligation under this Agreement will not at any time exceed the least of (i) the amount certified by the City's Controller, (ii) the Grant Amount, as such amount may be amended pursuant to Article Nine, (iii) the amount of funds actually received by the City for the Work Program, and (iv) the costs incurred by the Corporation to perform the Work Program as described in Appendix C1-C3. Notwithstanding any other provision of this Agreement, in no event shall the City be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages arising out of or in connection with this Agreement or the Work Program.
- C. The City and its employees and officers are not authorized to request the Corporation to perform services or to provide materials, equipment and supplies that are beyond the scope of the Work Program unless this Agreement is amended in writing to authorize such additional services, materials, equipment or supplies. The City is not required to pay the Corporation for services, materials, equipment or supplies that are provided by the Corporation that are beyond the scope of the services, materials, equipment and supplies agreed upon herein and that were not approved by a written amendment to this Agreement having been lawfully executed by the City.
- D. The City and its employees and officers are not authorized to offer or promise to the Corporation additional funding for this Agreement which would exceed the maximum amount of funding provided for herein. Additional funding for this Agreement in excess of the maximum provided herein shall require lawful approval and certification by the Controller. The 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.
- E. NO COST INCURRED BY THE CORPORATION PRIOR TO THE CERTIFICATION OF THIS AGREEMENT WILL BE REIMBURSED, INCLUDING BUT NOT LIMITED TO ARCHITECT OR CONSULTANT FEES INCURRED IN DEVELOPING THE PROJECT BUDGET OR IMPROVEMENT PLANS FOR THE WORK PROGRAM. IN ADDITION, IF THE WORK PROGRAM IS STALLED OR SUSPENDED FOR ANY PERIOD OF TIME, THE CITY MAY, AT ITS OPTION, REFUSE TO MAKE ANY PAYMENTS HEREUNDER APPLICABLE TO SUCH PERIOD, INCLUDING PAYMENTS FOR SALARIES AND OTHER FIXED ITEMS OF EXPENSE.

### **Section 2.02 - Disbursements**

- A. Upon certification of this Agreement by the City's Controller, and upon the execution of any contract between Corporation and its contractor or lessor in accordance with Article Four hereof, the City may, at its option, deposit an amount commensurate with the initial payment called for in such contract into a separate account of a designated lending institution established by the Corporation solely for funds provided under this Agreement.
- B. After the initial advance, if any, made pursuant to Section 2.02(A) above, the Corporation shall submit disbursement requests to MOH, no more frequently than monthly, together with copies of all invoices and other documents supporting the request. The City shall have no obligation to disburse the requested amounts unless and until the Corporation has provided appropriate documentation or other support, to the satisfaction of MOH, that the requested disbursement complies with the requirements of this Agreement. Upon review and approval of the request, and at MOH’s option, a physical inspection of the Work Program, MOH will process payments to the Corporation. If the disbursement request relates to amounts due pursuant to third party contracts, MOH will not disburse amounts that exceed the amounts

specified in the approved contract. For construction contracts, MOH shall withhold a minimum of 10% of each progress payment (the "Retained Amount") pending final Work Program completion. The Retained Amount will be paid upon MOH's receipt of a certified Notice of Completion, appropriate lien waivers or releases, a Request for Final Payment together with copies of all invoices and other documents supporting that request, and any other documents or instruments reasonably requested by MOH.

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

D. The City's sole obligation under this Agreement shall be to act in good faith to administer the MOH Program and to make disbursements as it deems appropriate pursuant to the terms of this Agreement. The City shall not, under any circumstances, be liable for any delay in disbursement or for any delay or failure to approve or disburse funds.

E. In the event of any dispute between the Corporation and any contractor, lessor or other third party relating to the Work Program, the Corporation shall immediately inform the City of the dispute and all information relative to the dispute. The City shall have no responsibility for resolving disputes between the Corporation and its contractor or lessor pertaining to the Work Program, nor shall the City be obligated to make any disbursements during the period that the City determines such a dispute exists. In the event any such dispute is not resolved within ninety (90) days, the City may, at its option, immediately suspend or terminate this Agreement and the City shall not be obligated to disburse any funds with respect to the disputed work; provided, however, the Corporation shall not be obligated to return any funds which have been disbursed by the City and properly applied by the Corporation for permitted expenses under this Agreement.

F. Any and all disbursement must be made in strict accordance with the Project Budget. The Corporation agrees to refund to the City any payments that MOH determines were not properly due to the Corporation under this Agreement, immediately upon receipt of notice from MOH of such determination. Any amendment to the Project Budget must be made in accordance with Article Nine.

G. The Corporation agrees that if the Corporation claims or receives payment from the City for an expense, payment or reimbursement that is later disallowed by the state or federal government, the Corporation shall promptly refund the disallowed amount to the City upon the City's request. At its option, the City may offset all or any portion of the disallowed amount against any other payment due to the Corporation hereunder or under any other Agreement. Any such offset with respect to a portion of the disallowed amount shall not release the Corporation from the Corporation's obligation hereunder to refund the remainder of the disallowed amount.

### **Section 2.03 - Program Income**

A. "Program Income" shall mean gross income earned by the Corporation from CDBG-supported and ESGP-supported activities, including but not limited to service fees, proceeds from the sale of commodities and real or personal property, usage and rental fees, payments of principal and interest on loans to eligible recipients and the repayment of deferred payment loans. For projects that include construction, "Program Income" means all gross income from the use or rental of real property that was constructed or improved by funds granted under this Agreement, less costs incidental to generation of such income. To the extent such construction or improvement is assisted with funds other than those granted under this Agreement, "Program Income" shall be adjusted to reflect the percentage of funds granted under this Agreement as compared to the total construction or improvement costs for the project. In addition to the use restrictions discussed in subsections (B) and (C) below, all other provisions of this Agreement shall apply to expenditures of Program Income.

B. Program Income generated prior to the disbursement of the entire Grant Amount shall be retained by the Corporation and expended against operating costs or improvement items identified in the Project Budget, or against additional operating costs or improvement items that are approved in writing by MOH. Program Income shall be substantially disbursed for eligible activities before additional cash disbursements may be requested under this Agreement. The amount of the Grant Amount to be disbursed to the Corporation may be reduced to the extent MOH reasonably determines Program Income is available to pay for items listed in the Project Budget.

C. Program Income earned after the disbursement of the entire Grant Amount but before expiration of the Term of this Agreement, as defined in Article Twelve below shall be expended for eligible activities only and upon the prior written approval of MOH.

D. Upon expiration of the later of (i) the Tenure Period, as defined in Article Twelve below, of this Agreement, (ii) the Term of this Agreement (for Work Programs that do not include construction), and (iii) the tenure period of any other CDBG-funded or ESGP-funded agreement between the City and the Corporation, or if such other agreement does not have a tenure period then upon its expiration, the Corporation shall return to the City any unexpended Program Income from the Work Program or from any other CDBG-funded or ESGP-funded activity.

E. The Corporation agrees to comply with HUD regulations concerning Program Income, which are established in the Consolidated Community Development Block Grant Regulation (24 C.F.R. Part 570 and Part 84), OMB Circular No. A-122, and incorporated herein by this reference.

### **ARTICLE THREE: RESTRICTIONS ON THE USE OF THE FUNDS**

#### **Section 3.01 - Restrictions on Disbursements**

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

- A. Costs listed as ineligible in OMB Circular A-122, which violate the terms of this Agreement or exceed the total Project Budget in Schedule 1.
- B. Costs incurred after MOH or HUD has requested the Corporation to withhold further disbursements and/or to furnish additional data, until the Corporation is thereafter advised by MOH in writing that the City and HUD have no objection to the Corporation so proceeding.
- C. Payments to any contractor, consultant, lessor or other third party without benefit of a written contract previously approved in writing by MOH pursuant to Article Four, or not in compliance with MOH requirements relating to consultant and fiscal matters.
- D. To replace non-federal contributions, loans or grants required by any agreement with any federal or federally-funded agency.
- E. Costs incurred by the Corporation 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.
- F. Costs relating to the acquisition, construction, reconstruction, rehabilitation, repair, maintenance or operation of religious structures used for religious purposes as set forth in 24 C.F.R. 570.200(j).
- G. Political activities, as more particularly set forth in Section 11.23 below.

#### **Section 3.02 - Contract Close Out**

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

### **ARTICLE FOUR: CONTRACT APPROVAL**

#### **Section 4.01 - Contractors and Consultants**

- A. The Corporation, when necessary to complete the Work Program, may contract parts of the Work Program to contractors acceptable to MOH, subject to the provisions of this Article Four.
- B. Prior to entering into any contract for contractor or consultant services, the Corporation must submit the proposed contract to MOH for approval, together with information concerning the qualifications and licensing of the proposed contractor or consultant and any additional information requested by MOH. All proposed contracts must detail the responsibilities, standards and compensation of the contractor or consultant. Reasons for disapproval of such contract

may include, but are not limited to, a scope of work or budget that does not reflect the Project Budget or Work Program, or insufficient qualifications of the contractor or consultant.

C. No funds will be disbursed by the Corporation or its contractor for the services of a consultant or contractor unless pursuant to a written contract as approved in writing by MOH and in conformance with the contracting procedures set forth in 24 C.F.R. Part 84. All contracts and subcontracts entered into by the Corporation shall include the provisions identified in Appendix H attached hereto.

D. No person providing services under contract with the Corporation 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 24 C.F.R. Part 84 and is not subject to the GS-18 limitation.

## **ARTICLE FIVE: ACQUISITION OF REAL AND PERSONAL PROPERTY**

### **Section 5.01 - Purchase Procedures**

Any purchase of property or services under this Agreement must be consistent with applicable federal, state and local laws as well as the existing and future procurement standards set forth in 24 C.F.R. Part 84 and Part 570, as the same may be amended, supplanted or supplemented from time to time.

### **Section 5.02 - Equipment and Supplies**

No Funds under this Agreement will be disbursed by the City for the purchase of equipment or supplies in an amount of \$1,000 or more, unless pursuant to a written contract previously approved by MOH in writing. The Corporation shall not circumvent this requirement for written consent by dividing an order or payment into two or more parts.

### **Section 5.03 - Publications and Work Product**

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

B. The Corporation understands and agrees that the City has the right to review, approve, disapprove or conditionally approve, in its sole discretion, the work and property funded in whole or part with the Funds, whether those elements are written, oral or in any other medium, as further provided in subsection D below. The Corporation has the burden of demonstrating to the City that each element of work or property funded in whole or part with the Funds is directly and integrally related to the Work Program as approved by the City. The City shall have the sole and final discretion to determine whether the Corporation has met this burden.

C. Without limiting the obligations of the Corporation set forth in subsection B above, the Corporation shall submit to the City for the City's prior written approval any publication or any training material that the Corporation prepares and pays for in whole or part with the Funds under this Agreement and that is included as part of the Work Program, and the Corporation shall not disseminate any such publication or training material unless and until it receives the City's consent. In addition, the Corporation shall submit to the City for approval, if the City so requests, any other program material or form that the Corporation uses or proposes to use in furtherance of the Work Program, and the Corporation shall promptly provide to the City one copy of all such materials or forms within two (2) business days following the City's request. The City's approval of any material hereunder shall not be deemed an endorsement of, or agreement with, the contents of such material, and the City shall have no liability or responsibility for any such contents. The City reserves the right to disapprove any material covered by this section at any time, notwithstanding a prior approval by the City of such material. The Corporation shall not charge for the use or distribution of any publication or training material funded all or in part

with the Funds, without first obtaining the City's written consent, which the City may give or withhold in its sole discretion.

D. The Corporation shall distribute any publication, training material or other material funded in whole or part with the Funds under this Agreement solely within San Francisco, unless the Corporation demonstrates a public benefit to San Franciscans from a broader distribution and the City otherwise gives its prior written consent, which the City may give or withhold in its sole discretion. In addition, the Corporation shall furnish any services funded in whole or part with the Funds under this Agreement solely within San Francisco, unless the City otherwise gives its prior written consent, which the City may give or withhold in its sole discretion.

E. The City may disapprove any element of work or property funded in whole or part by the Funds that the City determines, in its sole discretion, has any of the following characteristics: is divisive or discriminatory on a basis prohibited under Section 11.02 below; undermines the purpose of the Work Program; discourages otherwise qualified potential employees or volunteers or any clients from participating in activities covered under the Work Program; undermines the effective delivery of services to clients of the Corporation; hinders the achievement of any other purpose of the City in making the Grant under this Agreement; or violates any other provision of this Agreement or applicable law. If the City disapproves any element of the Work Program as implemented, or requires any change to it, the Corporation shall immediately eliminate the disapproved portions and make the required changes. If the City disapproves any materials, activities or services provided by third parties, the Corporation shall immediately cease using the materials and terminate the activities or services and shall, at the City's request, require that the Corporation obtain the return of materials from recipients or deliver such materials to the City or destroy them.

F. The City has the right to monitor from time to time the administration by the Corporation 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 Funds, to ensure that the Corporation is performing such element of the Work Program, or causing such element of the Work Program to be performed, consistent with the terms and conditions of this Agreement.

#### **Section 5.04 - Acquisition and Disposition of Nonexpendable Property**

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

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

C. Any interest of the Corporation or any subcontractor, in drawings, plans, specifications, studies, reports, memoranda, computation sheets, the contents of computer diskettes, or other documents or publications prepared by the Corporation or any subcontractor in connection with this Agreement or the implementation of the Work Program or the services to be performed under this Agreement, shall become the property of the City. Notwithstanding the foregoing, the Corporation may retain and use copies for reference and as documentation of its experience and capabilities.

#### **Section 5.05 - Acquisition and Disposition of Real Property**

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

A. The Corporation must obtain prior written approval from MOH for any such acquisition.

B. The Corporation shall be solely responsible for the condition, use and operation of the Acquired Property and for any liability with respect thereto. During the Tenure Period, the Corporation will maintain the Acquired Property in good

condition and repair, and use it to benefit principally low or moderate-income persons and to provide any other services as specified in the Work Program.

C. If the Grant Amount is used in whole or in part for such acquisition, the Corporation must execute and record a Deed of Trust naming the City as beneficiary, which Deed of Trust must expressly provide that it is executed to secure performance of this Agreement. The Deed of Trust shall be in a form and content approved by MOH, and shall be recorded as a lien on the Corporation's interest in the Acquired Property pursuant to procedures established by MOH.

D. No portion of the Corporation's interest in the Acquired Property or the improvements constructed thereon may be transferred prior to expiration of the Tenure Period without the prior written approval of MOH. "Transfer" includes any transfer or encumbrance of any of the Corporation's interest in such property, and any transfer or encumbrance of any ownership interest in the Corporation. If necessary, the Corporation must also obtain HUD's prior written approval of such transfer.

E. Six (6) months following the date of acquisition and annually thereafter during the Tenure Period, the Corporation shall file with MOH written reports on the operation and maintenance of the Acquired Property and shall furnish, upon request, such other pertinent data evidencing continuous use of the Acquired Property for the purposes specified in this Agreement.

F. In the event that the Corporation disposes of the Acquired Property during the Tenure Period, the Corporation shall pay to MOH the higher of (i) the fair market value of the Acquired Property, or (ii) all proceeds from such disposition. In the event the Acquired Property has been acquired only in part with the Grant Amount, the amount payable to MOH shall be equal to the fair market value or gross disposition proceeds as set forth above multiplied by the percentage of acquisition costs funded with the Grant Amount.

#### **Section 5.06 - Property Improved, Renovated or Rehabilitated with the Funds**

A. No real property may be improved, renovated or rehabilitated in whole or in part with the Grant Amount unless the Corporation holds either title to the real property or holds a leasehold interest in the real property with a term or remaining term of not less than the Tenure Period. If the Corporation holds title to the real property, then the Corporation agrees that it shall, at the time of entering into this Grant Agreement or anytime thereafter through to the end of the Tenure Period, agree to record a deed of trust against the real property in a form approved by the City to secure the Corporation's obligations under this Agreement. In the event of a default, the City would have all rights and remedies available by law or in equity, including but not limited to the right to foreclose upon the deed of trust.

B. In the event Corporation holds a leasehold interest in such real property, MOH may require that the Corporation, as lessee, and its lessor amend the lease to include some or all of the following provisions:

1. Landlord and Tenant hereby agree that the City and County of San Francisco (hereafter, the City), as an intended third-party beneficiary, shall have certain rights exercisable at the election of the City upon a default by Tenant. These rights are as follows:
  - a. Upon a default by the Tenant under this Lease Agreement which occurs during the unexpired Term of the Grant Agreement or a default by Landlord which default causes Tenant to vacate the Premises, the City shall have the right, but not the duty, to assume the rights and duties of the Tenant under this Lease Agreement or to select a non-profit corporation to assume the said rights and duties. A non-profit corporation so selected by the City shall be subject to approval by Landlord, which approval shall not be unreasonably withheld, except in the case of a default by Landlord which causes Tenant to vacate or abandon the Premises, in which case the City can assume Tenant's obligations or replace without Landlord's prior approval.
  - b. During the Term of the Grant Agreement, Landlord shall not have the right to cancel this Lease Agreement unless the City is given written notice of default and the City does not, within sixty (60) days after receipt of such notice, notify the Landlord in writing that the City elects to exercise its rights under the above paragraph of this Amendment. The City shall have the right, within thirty (30) days after giving such notice to Landlord, to commence to cure the default of Tenant and, so long as the City shall diligently and in good faith continue to cure Tenant's default, the City shall not be in default hereunder. Notwithstanding any of the above provisions, if the default of Tenant is the failure to pay rent, the City shall cure such default within sixty (60) days after giving such notice to Landlord.

- c. Landlord and Tenant agree that the leased premises will be used for secular purposes and will be available to persons regardless of religious affiliation in accordance with 24 C.F.R. 570.200(j).
  - d. Landlord and Tenant hereby agree that during the Term of the said Grant Agreement the Landlord Tenant (line out either Landlord or Tenant and both parties initial: \_\_\_\_\_) shall provide property insurance covering all leased real property constructed, improved or rehabilitated in whole or in part by CDBG or ESGP funds, covering all risks of loss, excluding earthquake and flood, for 100% of the replacement value, with deductible, if any, acceptable to the City, and naming the City as a Loss Payee, as its interest may appear.
2. The leased premises are to be used to provide neighborhood facilities for persons of low or moderate income as defined by the United States Department of Housing and Urban Development.

C. In the event that the Corporation quits, vacates or surrenders the real property prior to the expiration of the Tenure Period, or elects or becomes unable to continue the use of said property as specified in its Work Program, the Corporation shall immediately pay to MOH the higher of: (i) the fair market value of the real property, or (ii) the Grant Amount; on a prorated basis. The prorated amount to be paid shall equal that portion of the Grant Amount which has been disbursed to the Corporation, multiplied by a fraction, the numerator of which is the number of months remaining in the Tenure Period following the Corporation's surrender of the property, and the denominator of which is the total number of months in the Tenure Period.

D. The Corporation may not undertake any physical improvements under this Agreement until it has received all necessary approvals in connection with any applicable state and/or federal environmental review process.

**Section 5.07 - Acquisition and Disposition of Leasehold Interests in Real Property**

The following conditions apply to any acquisition of a leasehold interest in real property in whole or in part with the Grant Amount:

- A. Any lease must be for a term not less than the Tenure Period. The Corporation must submit the proposed lease to MOH for review and approval prior to execution. Whenever the Funds are used in whole or in part for the acquisition of a leasehold interest in real property, MOH may require the inclusion of certain language to achieve the purpose of this Agreement, the MOH Program and/or the City Homeless Assistance Plan.
- B. The Corporation must execute and record a Deed of Trust as a lien on the Corporation's leasehold interest naming the City as beneficiary or, if approved by the City, a Deed of Trust on other real property of Corporation. The Deed of Trust must expressly provide that it is executed to secure performance of this Agreement. The Deed of Trust shall be in a form and content approved by MOH. In addition or as an alternative to the Deed of Trust, MOH may require that the proposed lease contain the language of Section 5.05(B) above.
- C. In the event the Corporation quits, vacates or surrenders said premises prior to the expiration of the Tenure Period, or elects or becomes unable to continue the use of said leasehold as specified in its Work Program, the Corporation shall immediately pay to the City the funds as set forth in Section 5.05(C) above.

**ARTICLE SIX: MONITORING AND REPORTING**

**Section 6.01 - Monitoring, Reporting Function and Audits**

- A. The Corporation agrees that MOH may monitor the progress of the activities performed by the Corporation pursuant to this Agreement, and the Corporation agrees to comply with any requirements imposed by MOH to meet performance standards required herein.
- B. During the Term, and for a period of five years after expiration of the Term, the Corporation shall create and maintain records that include the following information: (i) the specific uses of the Grant Amount and of any other monies used to fund the performance of the Work Program, including records demonstrating that each activity undertaken meets one of the national objections of the CDBG program and is eligible for reimbursement hereunder; (ii) copies of all invoices, canceled checks, payroll records, attendance records, and any other documentation for costs which have been reimbursed by the Grant Amount, including withholding, social security payments, and other employee/contractor-related

payments; (iii) documentation relating to the Corporation's tax-exempt status; (iv) the Corporation's tax returns and financial statements applicable the Term; and (v) financial information as required by 24 C.F.R.. Part 570.502. All records shall be maintained in accordance with OMB Circular A-122 and HUD regulations, as applicable, and in a manner which, in MOH's reasonable judgment, will provide an effective system of internal control and will permit timely and effective audits as required by this Agreement. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the five-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five-year period, whichever is later.

C. During the Term and for a period of five (5) years following the expiration of the Term, the Corporation shall provide to MOH, HUD, and/or the Controller reasonable access to its books and records (including, but not limited to, documentation relating to the Corporation's tax-exempt status, other tax records, financial statements and payroll information) and all records relating to the Work Program, and shall provide to MOH, upon request, copies of relevant financial and other documents to allow MOH to do the following: (i) to provide timely and accurate information to HUD as required by HUD, and (ii) to provide timely and accurate information on Work Program status and Agreement compliance to the Mayor, the Board of Supervisors, MOH, and the Citizen's Committee on Community Development (CCCD).

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

E. The Corporation shall send reports to MOH as set forth in the Work Plan, with a minimum frequency of once a quarter. Reports must summarize the progress of community development activities undertaken as part of this Agreement and the identifiable results of such activities in accordance with Chapter 5 of the Operating Procedures Manual and applicable HUD regulations, and in accordance with such other requirements as may be specified by MOH from time to time. Reports shall also include data and records on the race, sex, and ethnicity of persons receiving employment through activities assisted under this Agreement.

F. If the Corporation cumulatively receives \$300,000 or more in federal funds in a year, it must conduct an independent audit and submit a copy of the audit report to MOH. The audit shall be performed by an independent auditor in accordance with OMB Circular A-133 (Audits of State and Local Governments and Non-Profit Organizations), as it may be amended from time to time.

## **ARTICLE SEVEN: INSURANCE. INDEMNIFICATION. BONDING**

### **Section 7.01 - Corporation's Insurance**

A. The Corporation shall maintain, throughout the Term, insurance and bonds in accordance with 24 C.F.R. Part 84 and other applicable HUD regulations, including but not limited to the following:

1. Workers' Compensation insurance of statutory limits, including Employers' Liability coverage with limits not less than \$1,000,000 each accident;
2. Comprehensive General Liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage, including coverage for Contractual Liability, Independent Contractors, Broad form Property Damage, Products and Completed Operations;
3. Comprehensive Automobile Liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage, including coverage for owned, non-owned and hired vehicles;

4. Property insurance covering all real property constructed, improved or rehabilitated and all real and personal (non-expendable) property leased or purchased in whole or in part with CDBG or ESGP funds, in form appropriate for the nature of such property, covering all risks of loss, excluding earthquake and flood, for 100% of the reconstruction value (brought up to current codes), with deductible, if any, acceptable to the City, and naming the City as loss payee, as its interest may appear, except that if the Corporation leases real property such coverage with respect to the leased property may be provided by the owner or landlord;
5. Blanket Fidelity Bond covering all offices and employers, for loss of funds caused by dishonesty, in amount not less than fifteen percent (15%) of the Grant Amount, naming the City as Loss Payee as its interests may appear; and
6. Professional Liability (errors and omissions) insurance with limits not less than \$750,000 each occurrence, covering architectural, engineering, design, technical or professional services, as appropriate, with respect to any subcontract for or any donation of professional services, for the term of the applicable construction contract.

All insurance must be carried under a valid and enforceable policy or policies issued by insurers of recognized responsibility that are rated Best A-:VIII or better (or a comparable successor rating) and legally authorized to sell such insurance within the State of California.

B. If any required insurance is provided under a claims-made form, the Corporation shall maintain such coverage continuously throughout the Term and, without lapse, for three (3) years following the expiration of the Term, to cover any occurrences during the Term which result in claims made after the Term.

C. If any required insurance is provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit such annual aggregate limit shall be three times the occurrence limits specified above.

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

E. Any and all Comprehensive General Liability and Comprehensive Automobile Liability policies held by the Corporation shall be endorsed to name the City and its officers, agents and employees as additional insured.

F. All policies shall be endorsed to provide thirty (30) days' prior written notice of cancellation, reduction in coverage or intent not to renew to the following address:

Mayor's Office of Housing  
1 South Van Ness Avenue 5<sup>th</sup> floor  
San Francisco, California 94103  
Attn: Director

G. Certificates of insurance and additional insured policy endorsements from insurers in a form acceptable to the City shall be furnished to the City prior to commencing any activities under this Agreement and as a condition of receiving payments, and complete copies of policies shall be furnished to the City within five (5) business days following the City's request.

H. In the event that any insurance proceeds are not applied to the project or the Work Program, such insurance proceeds shall be paid to the City up to the amount of funds disbursed to the Corporation under this Agreement.

I. The Corporation's compliance with the insurance requirements hereunder shall in no way reduce, affect or relieve the Corporation's indemnification and other obligations hereunder.

#### **Section 7.02 - Indemnity Provision**

A. The Corporation shall be solely responsible for all work performed by or at the direction of the Corporation under this Agreement or otherwise, and for all acts and omissions of the Corporation and its agents, officers, representatives, employees, consultants, contractors and subcontractors (collectively, the "Corporation Parties"), and it shall bear all

losses, costs, liabilities, and damages resulting therefrom, including but not limited to any claims by or against any of the Corporation Parties and notwithstanding any consent or involvement of the City. The Corporation shall be responsible for incidental and consequential damages resulting in whole or in part from the Corporation Parties' acts or omissions.

B. The Corporation shall indemnify, assume the defense of (if requested), reimburse, and hold the City, and its agents, officers, representatives, employees, consultants, contractors, and subcontractors (collectively, the "City Parties"), harmless from and against every claim, loss, damage, injury, cost, expense (including attorneys fees), judgment and direct or vicarious liability of every kind, nature, and description arising in whole or in part from the performance or breach of this Agreement or from acts or omissions of any of the Corporation Parties, except where such claim, loss damage, injury, expense, judgment or direct or vicarious liability is caused solely, exclusively and directly by the willful misconduct of any of the City Parties.

C. The Corporation specifically acknowledges and agrees that it has an immediate and independent obligation to defend each of the City Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to the Corporation by the City and continues at all times thereafter.

D. The above indemnity shall extend to, but shall not be limited to, breach of contract, faulty workmanship or any negligent or intentional conduct whatsoever.

E. The Corporation's indemnification obligations hereunder are in no way reduced, limited, or affected by the amount or type of insurance carried or required to be carried by the Corporation hereunder.

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

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

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

### **Section 7.03 - Bonding for Construction Contracts**

Prior to the release of any of the Grant Amount for the construction or improvement of facilities, the Corporation must enter into a contract with a contractor wherein the Corporation shall explicitly retain an amount equal to or greater than 10% (as determined by mutual agreement between the Corporation and MOH) 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 MOH 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 MOH may determine. Prior to the release of any of the Grant Amount for the construction or improvement of facilities expected to cost between \$20,000 and \$100,000, the City may require the Corporation or contractor to post a performance bond and a labor and material payment bond, in a form approved by the City, in amounts not less than 100% of the contract price for the work. For all contracts exceeding \$100,000, the contractor must provide a performance bond and a labor and material payment bond equal to 100% of the contract price for the work.

### **Section 7.04 - Construction Contractor's Insurance**

A. The Corporation 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 Employer's Liability, with limits of not less than \$1,000,000 each accident;
2. Comprehensive General Liability insurance with limits of not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage, including coverage for Contractual Liability, Independent Contractors, Broad Form Property Damage, Products and Completed Operations;
3. Comprehensive Auto Liability insurance with limits of not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage, including coverage for owned, non-owned and hired vehicles; 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 Corporation with certificates of insurance and additional insured policy endorsements from insurers in a form acceptable to the City for the above coverage prior to the commencement of any work, and the Corporation shall verify that the above insurance requirements are maintained throughout the term of the construction contract and during all construction. Each insurance policy shall name the City and its Agents as an additional insured. Upon request, the Corporation shall furnish copies of such certificates of insurance and endorsements to the City. In the event the above insurance is not maintained for any reason, the Corporation shall immediately cease all construction activities on the Work Program until such time as the required insurance is resumed. To the extent that any insurance proceeds are not used to rebuild the Work Program, any such proceeds shall be paid to the City to the extent of funds disbursed to the Corporation under this Agreement.

#### **Section 7.05 - Professional Liability Insurance**

A. The Corporation 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 (errors and omissions) insurance with limits not less than \$750,000 each occurrence, covering architectural, engineering, design, technical or professional services, as appropriate, to be performed under such contract. The Corporation shall furnish MOH with a certificate for the above coverage.

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

### **ARTICLE EIGHT: CONTRACTOR RESPONSIBILITIES**

#### **Section 8.01 - Independent Contractor**

A. The City shall not be liable for any act of the Corporation and the Corporation shall not be liable for any act of the City, and nothing herein contained shall be construed as creating the relationship of employer and employee between the City and the Corporation or any of their respective agents or employees. The Corporation shall at all times be deemed 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 Agreement. The Corporation has and hereby retains the right to exercise full control and supervision of the services and full control of employment, direction, compensation and discharge of all persons assisting it in the performance of services hereunder. The Corporation agrees to be solely responsible for all matters relating to payment and employment of employees, including compliance with social security, withholding and all other regulations governing such matters.

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

## ARTICLE NINE: AMENDMENTS

### Section 9.01 - Amendments

The City and the Corporation reserve the right to amend or supplement this Agreement at any time by mutual consent. It is mutually understood and agreed that no alteration, amendment or variation of the terms of the Agreement shall be valid unless made in writing and signed by the parties hereto, and that no oral understandings or agreements are incorporated herein. Any proposed amendment to this Agreement may be subject to HUD approval where the City determines it is necessary.

## ARTICLE TEN: SUSPENSION, TERMINATION AND OTHER RIGHTS

### Section 10.01 - Fiscal Control Requirements

The Corporation shall take all necessary steps to ensure proper fiscal control over the Funds and to ensure that the Funds are properly used in furtherance of the Work Program and for no other purposes. Without limiting the foregoing, the Corporation shall require not less than two authorized signatures from officers and/or board members of the Corporation, (i) on each funding request, and (ii) before making any payment in excess of \$5,000 using the Funds or where the Corporation intends to request reimbursement with the Funds. MOH shall have the right to review and suggest improvements to the Corporation's fiscal control mechanisms or procedures, and the Corporation's inability to provide proper fiscal control or the Corporation's refusal or inability to accept and implement additional fiscal controls mandated by MOH, the City, or HUD shall be a material breach of this Agreement. MOH may suspend or terminate payments to the Corporation hereunder pursuant to this Article Ten upon MOH's determination of mismanagement by Corporation.

### Section 10.02 - Suspension, Probation, and Termination

A. The City reserves the right to suspend, to put on probation, and/or to terminate this Agreement and the disbursement of any funds hereunder in whole or in part upon the occurrence of any one or more of the following events:

(1) ineffective or improper use of the Grant Amount; (2) failure to comply with any material term or condition set forth in this Agreement or in any document or instrument attached hereto or incorporated herein, or any change of circumstances that would cause any of the representations and warranties contained in this Agreement to be false or misleading at any time during the Term; (3) any statement, representation or warranty contained in this Agreement, in the application documents, in any funding request or in any other document submitted to MOH under this Agreement is found by MOH to be false or misleading; (4) the Corporation fails to provide or maintain in effect any policy of insurance required in Article Seven; (5) failure to comply with any previous, existing or future agreement between the City and the Corporation; (6) failure to comply with the reporting requirements required herein or the submission to the City of reports which are incorrect, incomplete and/or misleading in any material respect, or the failure to keep accurate records or otherwise fail to implement and maintain appropriate fiscal control measures as required under this Agreement, as determined by MOH in its sole discretion; (7) impracticality or unfeasibility of carrying out the Agreement; (8) inability or unwillingness of the Corporation to accept any additional conditions that may be provided by law, by executive order, by regulations, or by any policy announced by HUD or MOH at any time; (9) violation by the Corporation, or its employees, representatives, officers or agents, of any applicable federal, state or local law or regulation; (10) failure to fulfill the goals and requirements set forth in the Work Program, or to cooperate with MOH's monitoring requirements, or to use the Funds as required under this Agreement, or any other unsatisfactory performance of this Agreement as determined by MOH in its sole discretion; (11) voluntary or involuntary bankruptcy, insolvency, reorganization, or the like relating to the Corporation's failure or inability to pay debts as they become due; (12) loss of or failure to maintain any license(s) or governmental approval(s) required for the lawful operation or performance of all or part of the activities funded by this Agreement; (13) the Corporation's suspension or debarment by the U.S. General Services Administration or any other governmental agency, or (14) breach or violation of the conflict of interest provisions set forth below. In addition to suspension and/or termination of this Agreement, the City may (A) demand the immediate return of any previously disbursed Funds that have been claimed or expended by the Corporation in breach of this Agreement, (B) refuse to consider any future application for grants or agreements from the Corporation or its affiliates upon the occurrence of any of the above events until such time as the breach or problem has been remedied or satisfied to the City's satisfaction, in its sole discretion, and (C) execute any and all other remedies available at law or in equity. All rights and remedies of either party hereto set forth in this Agreement shall be cumulative, except as may otherwise be provided herein.

B. The City may immediately suspend this Agreement or put this Agreement on probation at any time for any of the above reasons, with or without notice to the Corporation and without any liability therefore. Should the City elect to terminate this Agreement, the City shall notify the Corporation in writing of the City's intent to terminate the Agreement,

specify the reasons(s), and furnish a description of corrective actions (if any) to be taken by the Corporation. The Corporation shall have five (5) working days in which to respond to such a letter of intent. If the Corporation does not reply to the letter of intent or effectuate the requested corrective measures to the satisfaction of the City within such five-(5) working day period, the City may terminate the Agreement, in its sole discretion and without liability therefore, by giving written notice to Corporation of such termination. Any termination shall be effective as of the date of such notice. The City need not give such letter of intent if the termination is for a performance problem or other matter not reasonably susceptible to a cure within such five (5) day period.

C. The Corporation shall notify MOH immediately upon the occurrence of any activity, notice or event that falls within the items listed in subsection (A) above.

### **Section 10.03 - Consequences of Probation, Suspension, or Termination**

A. In the event the City puts this Agreement on probation, the City shall continue to make disbursements under this Agreement for a period of up to six (6) months for the Corporation to rectify performance deficiencies or violations to the satisfaction of the City. Following and/or during this probation, the City may elect to suspend or terminate this Agreement as provided above.

B. In the event the City suspends this Agreement, the City shall not be obligated to make any further disbursements under this Agreement unless and until the City decides to reinstate this Agreement and any prior violation has been remedied to the satisfaction of the City. Following such suspension, the City may elect to terminate this Agreement as provided above.

C. Upon termination of this Agreement, the Corporation shall, without limiting any of the City's rights or remedies, immediately refund to the City all unexpended and improperly expended funds disbursed to the Corporation under this Agreement, and any assets and any interests of any type and in any form acquired, leased, or rehabilitated with CDBG or ESGP monies. The Corporation shall execute any documents or instruments reasonably requested by the City to effectuate such transfer.

## **ARTICLE ELEVEN: OTHER PROVISIONS**

### **Section 11.01 - Assignment**

The Corporation may not assign its rights or obligations under this Agreement without the prior written consent of the City, which the City may withhold in its sole discretion. No such assignment shall operate to release the Corporation of its primary responsibility hereunder.

### **Section 11.02 - Nondiscrimination and Equal Benefits**

A. Covenant Not to Discriminate. In the performance of this Agreement, the Corporation covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee or any City employee working with or applicant for employment with the Corporation, in any of the Corporation's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Corporation.

B. Contracts and Subcontracts. The Corporation shall include in all contracts and subcontracts relating to the Work Program or Work Program a non-discrimination clause applicable to such contractor or subcontractor in substantially the form in Section 11.02(A) above. In addition, the Corporation shall incorporate by reference in all contracts and subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all contractors and subcontractors to comply with such provisions. The Corporation's failure to comply with any of the obligations in this subsection shall constitute a material breach of this Agreement

C. Non-Discrimination in Benefits. The Corporation does not as of the date of this Agreement and will not during the remainder of the Term, in any of its operations in San Francisco or where work is being performed for the City elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered

with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

D. Condition to Agreement. As a condition to this Agreement, the Corporation shall execute the “Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits” form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

E. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting with the City are incorporated herein by reference and made a part of this Agreement as though fully set forth herein. The Corporation 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 but not limited to the remedies provided in such Chapters. Without limiting the foregoing, the Corporation understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$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 and deducted from any payments due the Corporation. The Corporation’s failure to comply with any of the obligations in this Paragraph shall constitute a material breach of this Agreement.

F. Incorporation of Chapters 12B and 12C. The current provisions of Chapters 12B, and 12C of the San Francisco Administrative Code relating to nondiscrimination by parties contracting with the City and County of San Francisco, are incorporated herein, and the Corporation agrees to comply with all such provisions that apply to grant recipients and parties contracting with the City, as the same may change from time to time.

G. Disability Compliance. The Corporation acknowledges that, pursuant to the Americans With Disabilities Act (ADA) and any other applicable federal, state or local laws (including Section 504 of the Rehabilitation Act of 1973), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. The Corporation shall comply, and shall require its contractors and consultants to comply, with the ADA and any and all other applicable federal, state and local disability rights legislation.

H. Federal Requirements. In the Work Program and all contracts and subcontracts relating thereto, the Corporation agrees to comply with the following laws and statutes relating to nondiscrimination: Title VII of the Civil Rights Act of 1964 (P.L. 88-352), 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.

1. The Contractor 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 Corporation’s nondiscriminatory practices as required hereunder.
2. The Corporation shall allow HUD access to all of its books and records to ascertain compliance with this section. In the event the Corporation’s noncompliance with the nondiscrimination provisions of this Agreement, this Agreement may be canceled, terminated or suspended in whole or in part and the Corporation may be declared ineligible for further government contracts.
3. The Corporation 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 subcontractor or vendor. The Corporation shall take such action with respect to the subcontractor or purchase order as HUD may direct to enforce such provisions, including sanctions.
4. The Corporation 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.

### **Section 11.03 - Additional Federal Requirements**

A. The Corporation agrees to abide by (i) OMB Circular A-122; (ii) 24 C.F.R. Part 84 and Part 570; and (iii) OMB Circular A-133; as the same may be modified, supplanted or supplemented from time to time. The Corporation 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. MOH will make available to the Corporation additional copies of each of these documents at MOH's offices.

B. If applicable under 24 Code of Federal Regulations ("C.F.R.") Part 135, the Corporation agrees as follows:

1. To comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u ("Section 3"). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low and moderate income persons, particularly persons who are recipients of HUD assistance for housing.
2. To comply with HUD's regulations 24 C.F.R. Part 135 (the "Part 135 Regulations"), which implement Section 3. As evidenced by their execution of this Agreement, the parties hereto certify that they are under no contractual obligation and they have no other impediment that would prevent them for complying with the Part 135 Regulations.
3. To send to each labor organization or representative of workers with which the Corporation has a collective bargaining agreement or other similar understanding, if any, a notice advising the labor organization of workers representative of the Corporation's commitments under Section 3, and will post copies of the notice in conspicuous places at all work sites where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, the availability of apprenticeship and training positions and the qualifications for each, the name and location of the person(s) taking applications for each of the positions, and the anticipated date the work shall begin.
4. To include a Section 3 clause similar to this Section 1.01(D) 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 Corporation shall not subcontract with any subcontractor where the Corporation has notice or knowledge that the subcontractor has been found in violation of the Part 135 Regulations.
5. To certify that any vacant employment positions, including training positions, that are filled (1) after a contractor is selected but before the contract is executed, and (2) with persons other than those to whom the Part 135 Regulations require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under the Part 135 Regulations.
6. The Corporation 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.

C. In the event the Corporation receives any payment or reimbursement hereunder, which HUD later disallows, the Corporation shall promptly refund the disallowed amount to MOH upon MOH's request. At its option, MOH may offset the amount disallowed from any future payment under this Agreement.

D. The Corporation 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 Corporation's premises. The Corporation agrees that any violation of this prohibition by the Corporation; its employees, agents or assigns will be deemed a material breach of this Agreement.

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

#### **Section 11.04 - Conflict of Interest**

A. Interest of Certain Federal Officials. No member or delegate of the Congress of the United States, and no Resident Commissioner, shall be admitted to any share or part of this Agreement or to any benefit to arise from it.

B. Interest of Employees, Agents, Consultants, Officers and Officials of City or Corporation. No employee, agent, consultant, officer or official of the City, the Corporation or of any other subrecipient of CDBG or ESGP funds who exercises or has exercised any functions or responsibilities with respect to activities assisted by CDBG or ESGP funds or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a personal or financial interest in or benefit from the activities assisted under this Agreement or have an interest in any contract, subcontract or agreement with respect thereto, or in the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure and for one year thereafter. In order to carry out the purposes of this section, the Corporation shall incorporate, or cause to be incorporated, in all contracts, subcontracts and agreements relating to activities assisted under this Agreement, a provision similar to that of this section. The Corporation shall be responsible for obtaining compliance with such provisions by the parties with whom it contracts and, in the event of a breach, shall take prompt and diligent action to cause the breach to be remedied and compliance to be restored.

C. Interest of Board Members and Officials of Grantee Corporation. No member of the board of directors, governing officer or employee of the Corporation who exercises any functions or responsibilities in connection with the planning or carrying out of the Program during his/her tenure or for one year thereafter, shall have any personal financial interest, direct or indirect, in any contract or subcontract, or the proceeds thereof for work to be performed in connection with the programs assisted under this Agreement. The prohibition contained in this section shall prevent, among other things, any officer or board member or employee, during his/her tenure and for one year thereafter, from assuming a position, within or outside the Corporation, funded directly or indirectly with CDBG or ESGP funds. Furthermore, no individual employee of the Corporation, including the executive director, shall be a member of the Board of Directors of the Corporation during his or her employment and for one year thereafter; provided, nothing herein shall prevent any employee from attending Board of Directors meetings. The Corporation shall take appropriate steps to assure compliance with this section. The Corporation agrees that it shall incorporate into every contract required to be in writing the following provision:

"Interest of Contractor and Employees - The Contractor covenants that no person, including but not limited to, an officer or board member or employee of the Corporation, who presently exercises any functions or responsibilities in connection with the Program, shall have any personal financial interest, direct or indirect, in this Contract or current City/Corporation Agreement. The Contractor further covenants that he/she presently has no interest and shall not acquire any interest, direct or indirect, in the immediate neighborhood or any parcels therein, which would affect or conflict in any manner or degree with the performance of his/her services hereunder. The Contractor further covenants that, in the performance of this contract, no person having any conflicting interest shall be employed. It shall be the responsibility of the Contractor to make all reasonable and lawful efforts and inquiries in determining if any employee or prospective employee has any conflicting interest. Any interest or possible interest of the Contractor or his/her employees must be disclosed to the Corporation and to the Mayor's Office of Housing."

Provided, however, that this paragraph shall be interpreted in such a manner so as not to unreasonably impede the statutory requirement that maximum opportunity be provided for employment of or participation by residents of the area.

D. Membership on Corporation Board. Membership on the Corporation's board of directors should have an adequate representation of different neighborhood and interest groups in the immediate neighborhood, particularly low and moderate-income persons for which services are being provided. The Corporation's board of directors shall consist of at least seven (7) members, and shall meet not less than quarterly, during the Term. The Corporation shall make any necessary amendments to its Articles of Incorporation or By-Laws, or both, necessary to comply with this condition. It is further understood that all such necessary amendments shall be a condition precedent to the disbursement of any payments by the City to the Corporation under this Agreement. A list of the current members of the Corporation's board of directors has been provided to the City, and, upon request, the Corporation shall provide to the City an updated list of current directors. Notwithstanding the above, the Corporation shall promptly notify the City in the event that the number of acting directors falls below seven (7) or the Corporation's board fails to meet in any quarter.

E. Interest of Members of an Immediate Family. The Corporation or a component thereof directly or indirectly receiving HUD funds shall employ only one member of an immediate family, and it shall not employ immediate family members of directors or officers of the Corporation. For purposes of this provision, immediate family shall include husband, wife, domestic partner, brothers, sisters, children and parents (both legal parents and stepparents). If the Corporation has any doubt as to its compliance with this requirement, it shall submit a written request to MOH for clarification and advice as to the proper course of action to be taken. Where noncompliance is found, MOH shall have the right, upon discovering such noncompliance, to order the Corporation to dismiss one or as many of its employees as are required to restore compliance with this requirement.

F. City and State Conflict Laws. Through execution of this Agreement, the Corporation acknowledges that it is familiar with the provisions of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provision and agrees that if it becomes aware of any such fact during the Term, the Corporation shall immediately notify the City.

G. Board Distribution. By executing this Agreement, the Corporation represents that it has distributed a copy of the above conflict of interest provisions to each of the Corporation's board members and employees, and agrees to distribute such provisions to each new board member and employee during the Term, and the Corporation has or will instruct each such board member or employee to verify the absence of any actual or potential conflict.

H. Notification of Limitations on Contributions. Through execution of this Agreement, the Corporation acknowledges that it is familiar with Section 1.126 of City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City, whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for the contract until three (3) months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

#### **Section 11.05 - MacBride Principles**

The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. The Corporation acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

#### **Section 11.06 - Tropical Hardwood and Virgin Redwood Ban**

The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, the Corporation shall not permit any construction with the use of tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event the Corporation fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, the Corporation shall be liable for liquidated damages for each violation in any amount equal to the Corporation's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

#### **Section 11.07 - Compliance with Lobbying Provisions**

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

1. No federal appropriated funds have been paid or will be paid, by or on behalf of 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.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this

federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. None of the funds, materials, property or services provided directly or indirectly under this Agreement shall be used for any partisan political activity, to further the election or defeat of any candidate for public office, or to support or defeat legislation pending before Congress.
4. The Corporation 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.

### **Section 11.08 - Requiring Minimum Compensation for Employees**

The Corporation agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance ("MCO"), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at [www.sfgov.org/site/uploadedfiles/oca/living\\_wage/mco/12p.pdf](http://www.sfgov.org/site/uploadedfiles/oca/living_wage/mco/12p.pdf). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, the Corporation agrees to all of the following:

For each hour worked by a Covered Employee during a Pay Period on work funded under the City contract during the Term, the Corporation shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. For the hourly gross compensation portion of the MCO, the Corporation shall pay \$10.77; provided, however, that if the Corporation is a Nonprofit Corporation or a public entity, the rate shall remain at \$9.00.

The Corporation shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the City with regard to the Corporation's compliance or anticipated compliance with the requirements of the MCO, for opposing any practice proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.

C. The Corporation understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by the Corporation of the terms in this Agreement. The City, acting through the Contracting Department and/or MOH, shall determine whether such breach has occurred.

D. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, the Corporation fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, the Corporation fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City, acting through the Contracting Department and/or MOH, shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:

1. The right to charge the Corporation an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;
2. The right to set off all or any portion of the amount described in subsection (d)(1) of this section against amounts due to the Corporation under this Agreement;
3. The right to terminate this Agreement in whole or in part;
4. In the event of a breach by the Corporation of the covenant referred to in subsection (b) of this section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and
5. The right to bar the Corporation from entering into future contracts with the City for three (3) years.

Each of the rights provided in this subsection D shall be exercisable individually or in combination with any other rights or remedies available to the City. Any amounts realized by the City pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

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

F. The Corporation shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Corporation from the City, which communications are marked to indicate that they are to be distributed to Covered Employees.

G. The Corporation shall provide reports to the City in accordance with any reporting standards promulgated by the City under the MCO, including the reports on subcontractors.

H. The Corporation shall provide the City with access to pertinent records after receiving a written request from the City to do so and being provided at least five (5) business days to respond. In addition to the other audit rights set forth in this Agreement, the City may conduct random audits of the corporation as set for in the MCO.

I. Any subcontractor entered into by the Corporation shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this section. The Corporation shall notify the Department of Administrative Services when it enters into such a subcontract and shall certify to the Department of Administrative Services that it has notified the subcontractor of the obligations under the MCO and has imposed the requirements of MCO on the subcontractor through the provisions of the subcontract. It is the Corporation's obligations to ensure that any subcontractor of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, the City may pursue any of the remedies set forth in this section against the Corporation.

J. Each Covered Employee is a third-party beneficiary with respect to the requirements of the subsections (a) and (b) of this section, and may pursue the following remedies in the event of a breach by the Corporation of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. The Corporation understands and agrees that if the Covered Employee prevails in such action, the covered Employee may be awarded: (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due to the maximum rate then permitted by law; (2) in the event of a breach by the Corporation of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against the Corporation arising from the Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. The Corporation also understands that the MCO provides that if the Corporation prevails in such action, the Corporation may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

K. If the Corporation is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000 (\$50,000 for nonprofits), but the Corporation later enters into an agreement or agreements that cause the Corporation to exceed that amount in a fiscal year, the Corporation shall thereafter be required to comply with the MCO under this Agreement. This obligation's arises on the effective date of this agreement between the Corporation and this department to exceed \$25,000 (\$50,000 for nonprofits) in the fiscal year.

### **Section 11.09 - No Joint Venture**

This Agreement does not create a partnership or joint venture between the City and the Corporation as to any activity conducted by the Corporation relating to this Agreement or otherwise. The Corporation is not a state or governmental actor with respect to any activity conducted by the Corporation hereunder. This Agreement does not constitute authorization or approval by the City of any activity conducted by the Corporation.

### **Section 11.10 - Violence Prevention**

The Corporation acknowledges the urgent need to prevent violence and create greater community awareness regarding the negative impact of violence of youth in our communities. The Corporation is encouraged, where appropriate, to direct its MOH-assisted activities to benefit youth and reduce violence. The Cranston-Gonzales National Affordable Housing Act requires that procedures be implemented to ensure confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted under the ESGP and that the address or location of any ESGP-assisted family violence shelter shall not be made public without the prior written authorization of the person or persons responsible for the operation of such shelter.

### **Section 11.11 - Labor Standards**

The Corporation 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.

### **Section 11.12 - Religious Activities**

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

### **Section 11.13 - Public Disclosure**

A. The Corporation understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov't Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder public records subject to public disclosure. The Corporation hereby acknowledges that the City may disclose any records, information and materials submitted to the City in connection with this Agreement.

B. If the Corporation receives a cumulative total of \$250,000 or more of City-provided or City-administered funds (including but not limited to this Agreement) during any year in which this Agreement is in effect; the Corporation shall comply with the provisions of Chapter 12L of the San Francisco Administrative Code. By executing this Agreement, the Corporation agrees to open its meetings and records to the public in the manner set forth in Sections 12L.4 and 12L.5 of the San Francisco Administrative Code. The Corporation further agrees to make good-faith efforts to promote community membership on its Board of Directors in the manner set forth in Section 12L.6 of the Administrative Code. The Corporation acknowledges that its failure to comply with any of the provisions of this Section shall constitute a material breach of this Agreement. The Corporation further acknowledges that such material breach of this Agreement shall be grounds for the City to terminate and/or not renew this Agreement, partially or in its entirety.

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

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

**Section 11.14 - False Claims**

Pursuant to San Francisco Administrative Code Sections 6.80-6.83, any contractor, subcontractor, supplier, consultant or subconsultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor, supplier, consultant or subconsultant who submits a false claim shall also be liable to the City for the cost, including attorney’s fees, of a civil action brought to recover any of those penalties or damages and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor, supplier, consultant or subconsultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor, supplier, consultant or subconsultant: (a) knowingly presents or causes to be presented to any officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses or causes to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the City; or (e) is beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

**Section 11.15 - Notices to Parties**

All notices to be given by the parties hereto shall be in writing and served by (a) hand delivery, (b) depositing same in the United States Post Office, postage prepaid, certified with return receipt requested, or (c) facsimile, as follows (or such other address as the parties may designate from time to time):

To City: Mayor’s Office of Housing  
1 South Van Ness Avenue, 5th Floor  
San Francisco, California 94103  
Attn: Director

To Corporation: (the address for Notices set forth in the Short Form Agreement)

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

**Section 11.16 - Administrative Remedy for Agreement Interpretation**

Should any question arise as to the meaning or intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the Director who shall decide the true meaning and intent of the Agreement.

**Section 11.17 - Grievance Procedures**

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

**Section 11.18 - Attendance at Meetings**

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

**Section 11.19 - Further Assurances**

From and after the date of this Agreement, the Corporation 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 or to carry out the purpose of this Agreement.

### **Section 11.20 - First Source Hiring Requirements**

A. If the Grant is (i) for public services, economic development, microenterprise assistance, or planning and the Grant Amount is Fifty Thousand Dollars (\$50,000) or greater, or (ii) for capital projects or construction funding and the Grant Amount is Three Hundred Fifty Thousand Dollars (\$350,000) or greater, then the Corporation shall comply with the hiring requirements imposed by the City's First Source Hiring Ordinance (San Francisco Administrative Code Chapter 83), which are incorporated herein by this reference. The Corporation shall notify the City's Workforce Development System (the "WDS") of all projected Entry Level Positions and the approximate date such positions will be available. It shall also notify the WDS of all vacancies or new positions for work related to the Work Program, and shall offer the WDS the first opportunity to provide qualified Economically Disadvantaged Individuals for employment in these positions. The Corporation shall not publicize or otherwise post such vacancies except as specified in Appendix G attached to the Short Form Agreement (the "First Source Hiring Agreement"), the terms of which are incorporated herein by this reference. Upon request by MOH, the Corporation agrees to separately execute the attached First Source Hiring Agreement, although the lack of such a separate execution shall not affect the requirements of the agreement as incorporated herein.

B. The Corporation shall keep, and provide to the City, accurate records demonstrating its compliance with the First Source Hiring Ordinance. A failure to abide by the provisions of the Section 11.20 may result in the imposition of liquidated damages in the amount of \$2,070 for every new hire for each Entry Level Position improperly withheld from the First Source Hiring process. Additionally, the Corporation may be subject to sanctions and penalties enumerated in the San Francisco Administrative Code. The Corporation shall include these provisions in any contracts it enters into, and any subcontracts, relating to the Work Program. The Corporation shall be responsible for ensuring compliance by all such contractors and subcontractors.

C. To the extent they overlap, the Corporation may comply with the requirements of Section 11.20 by comply with the Section 3 requirements set forth in Section 11.03 above.

### **Section 11.21 - Card Check Agreements**

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

### **Section 11.22 - EIC Forms**

A. The Corporation shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty (30) days following the date on which this Agreement becomes effective (unless the Corporation has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by the Corporation; and (iii) annually between January 1 and January 31 of each calendar year during the Term of this Agreement.

B. Failure to comply with any requirement contained in subparagraph (a) above shall constitute a material breach by the Corporation of the terms of this Agreement. If within thirty (30) days after the Corporation receives written notice of such a breach, the Corporation fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, the Corporation fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

C. Any Subcontract entered into by the Corporation shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this Section.

D. Capitalized terms used in this section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

### **Section 11.23 - Prohibition on Political Activity with City Funds**

In accordance with San Francisco Administrative Code Chapter 12.G, no funds appropriated by the City for this Agreement may be expended for organizing, creating, funding, participating in, supporting, or attempting to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity"). The terms of San Francisco Administrative Code Chapter 12.G are incorporated herein by this reference. Accordingly, an employee working in any position funded under this Agreement shall not engage in any Political Activity during the work hours funded hereunder, nor shall any equipment or resource funded by this Agreement be used for any Political Activity. In the event the Corporation, or any staff member in association with the Corporation, engages in any Political Activity, then (i) the Corporation shall keep and maintain appropriate records to evidence compliance with this section, and (ii) the Corporation shall have the burden to prove that no funding from this Agreement has been used for such Political Activity. The Corporation agrees to cooperate with any audit by the City or its designee in order to ensure compliance with this section. In the event the Corporation 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 the Corporation and the City, (ii) prohibit the Corporation 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 the Corporation under this Agreement.

### **Section 11.24 - Miscellaneous**

(a) No waiver by any party of any of the provisions of this Agreement shall be effective unless in writing and signed by an officer or other authorized representative of the City, and only to the extent expressly provided in such written waiver. No waiver shall be deemed a subsequent or continuing waiver of the same, or any other, provision of this Agreement. (b) Except as expressly provided to the contrary, all approvals, consents and determinations to be made by the City or MOH hereunder may be made in the sole and absolute discretion of the City or MOH. (c) This instrument (including the exhibit(s) hereto) contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. (d) The section and other headings of this Agreement are for convenience of reference only and shall be disregarded in the interpretation of this Agreement. (e) Time is of the essence in all matters relating to this Agreement. (f) California laws and the City's Charter shall govern this Agreement. (g) If the Corporation consists of more than one person or entity then the obligations of each person and/or entity shall be joint and several. (h) Subject to the prohibition against assignments or other transfers by the Corporation hereunder, this Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns. (i) Notwithstanding anything to the contrary contained in this Agreement, the Corporation acknowledges and agrees that no officer or employee of the City has authority to commit the City to this Agreement unless and until it has been duly authorized and fully executed by the City, MOH, the City Attorney's Office, and any additional entity set forth.

## **ARTICLE TWELVE: EFFECTIVE DATE, TIME, TENURE PERIOD AND TERM**

### **Section 12.01 - Effective Date**

The effective date of this Agreement (the "Effective Date") shall be the date of the City Controller's certification of the availability of funds under Charter Sections 3.301 and 6.302 and the full execution hereof by all parties.

### **Section 12.02 - Time**

Time is of the essence in this Agreement. The term of this Agreement (the "Term") shall commence on the Effective Date and shall terminate on June 30, 2008 unless sooner terminated as set forth herein. Any funds not expended for eligible costs on or before June 30, 2008 shall be immediately returned to the City, regardless of the reason for the delayed expenditure and regardless of whether the Corporation has completed the Work Program.

### **Section 12.03 - Tenure Period**

Notwithstanding the expiration or termination of this Agreement, if the Funds are used for the purchase or improvement of real property, then the Corporation shall maintain the acquired or improved property for eligible purposes consistent with CDBG regulations (see 24 C.F.R. 570.503 and 570.505) for the Tenure Period. The "Tenure Period" of this Agreement is the period of time that starts with the later of the purchase of the applicable real property or the completion of the improvements, and that ends five (5) years thereafter if the Grant Amount is less than \$100,000, ten (10) years

thereafter if the Grant Amount is between \$100,000 and \$250,000, and fifteen (15) years thereafter if the grant amount is \$250,000 or greater.

## **ARTICLE THIRTEEN: REPRESENTATIONS AND WARRANTIES**

### **Section 13.01 - Representations and Warranties**

The Corporation makes the following representations as of the date of this Agreement and at all times throughout this Agreement:

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

(b) The Corporation's operations, offices and headquarters are located at the address for notices set forth herein. All aspects of the Work Program will be implemented at the geographic location specified in the Work Program.

(c) No document furnished or to be furnished by the Corporation to the City in connection with this Agreement, any funding request or any other document relating to any of the foregoing, contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

(d) Except as may be permitted hereunder and approved by MOH, the Corporation has not entered into any agreement, arrangement or understanding with any other person or entity pursuant to which such person or entity will implement or assist in implementing all or any portion of the Work Program.

(e) Neither the Corporation, nor any of its contractors, has 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 Corporation or any of its contractors 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 MOH. Any such suspension, debarment, 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

CITY AND COUNTY OF SAN FRANCISCO

\_\_\_\_\_  
a California nonprofit public benefit corporation

BY: \_\_\_\_\_  
GAVIN NEWSOM, MAYOR

BY: \_\_\_\_\_  
PRESIDENT OF BOARD OF DIRECTORS

BY: \_\_\_\_\_  
MATTHEW O. FRANKLIN, DIRECTOR  
MAYOR'S OFFICE OF HOUSING

BY: \_\_\_\_\_  
EXECUTIVE DIRECTOR

APPROVED AS TO FORM:

DENNIS J. HERRERA  
CITY ATTORNEY

BY: \_\_\_\_\_  
DEPUTY CITY ATTORNEY

MOH Grant Agreement from July 1, 2007 to June 30, 2008 \$ \_\_\_\_\_ \*\*PM \_\_\_\_\_

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

## APPENDIX H

### Required Subcontracting Provisions

The Corporation shall include the following provisions in every subcontract or purchase order relating to the Work Program, unless the Corporation receives the written consent of MOH to the non-inclusion of any such provision. The entity entering into the subcontract with the Corporation shall hereinafter be referred to as the "Subcontractor".

1. No Guaranty or Liability of CCSF. This agreement is between the Corporation and the Subcontractor, and all payments due and owing hereunder shall be payable by the Corporation. In no event shall the City and County of San Francisco or its Mayor's Office of Housing (the "City") be deemed a guarantor or a party to this agreement, and the City shall have no responsibility for payment and no liability under this agreement under any circumstances.
2. Compliance with Laws and Procurement Standards. Any purchase of property or services under this agreement must be consistent with applicable federal, state and local laws as well as the existing and future procurement standards set forth in 24 C.F.R. Part 84, as the same may be amended, supplanted or supplemented from time to time.
3. Covenant Not to Discriminate.
  - a. In the performance of this agreement, the Subcontractor covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with the Subcontractor, in any of the Subcontractor's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Subcontractor. The provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code are incorporated herein by this reference, and Subcontractor agrees to comply with such provisions. Subcontractor's failure to comply with the obligations in this subsection shall constitute a material breach of this agreement, and without limiting the foregoing, the Subcontractor understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$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 the Subcontractor and/or deducted from any payments due the Subcontractor.
  - b. The Subcontractor further agrees to comply with the following laws and statutes relating to nondiscrimination: Title VII of the Civil Rights Act of 1964 (P.L. 88-352), 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.
  - c. The Subcontractor 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 Subcontractor's nondiscriminatory practices as required hereunder.
  - d. The Subcontractor 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.
4. Disability Compliance. The Subcontractor acknowledges that, pursuant to the Americans With Disabilities Act (ADA) and any other applicable federal, state or local laws (including Section 504 of the Rehabilitation Act of 1973), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. The Subcontractor shall comply with the ADA and any and all other applicable federal, state and local disability rights legislation.
5. Intellectual Property and Plans and Specifications. Any interest of the Subcontractor in drawings, plans, specifications, studies, reports, memoranda, computation sheets, the contents of computer diskettes, or other documents or publications prepared by the Subcontractor in connection with this agreement shall become the property of the City. Notwithstanding the foregoing, the Subcontractor may retain and use copies for reference and as documentation of its experience and capabilities.

6. Publications and Work Product.

a. If, in connection with this agreement and paid for in whole or in part using the Funds, the Subcontractor creates artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any other original works of authorship or publications, such creations shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such creations shall be the property of the City. If it is ever determined that any such creations are not works for hire under applicable law, the Subcontractor hereby assigns all copyrights thereto to the City, and agrees to provide any material, execute such documents and take such other actions as may be necessary or desirable to effect such assignment. With the prior written approval of the City, the Subcontractor may retain and use copies of such creations for reference and as documentation of its experience and capabilities. The Subcontractor understands and agrees that the City has the right to review, approve, disapprove or conditionally approve, in its sole discretion, the work and property funded in whole or in part with the Funds, whether those elements are written, oral or in any other medium, and shall submit to the City for the City's prior written approval any publication or any training material that the Subcontractor prepares under this agreement. The Subcontractor further agrees that it shall not disseminate any such publication or training material unless and until it receives the City's consent. In addition, the Subcontractor shall submit to the City for approval, if the City so requests, any other program material or form that the Subcontractor uses or proposes to use in furtherance of this agreement, and the Subcontractor shall promptly provide to the City one copy of all such materials or forms within two (2) business days following the City's request.

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

c. The City may disapprove any element of work or property funded in whole or part by the Funds that the City determines, in its sole discretion, has any of the following characteristics: is divisive or discriminatory on a basis prohibited under Section 3 above; undermines the purpose of the Work Program; discourages otherwise qualified potential employees or volunteers or any clients from participating in activities covered under the Work Program; undermines the effective delivery of services to clients of the Subcontractor; hinders the achievement of any other purpose of the City in making the grant under this agreement; or violates any other provision of this agreement or applicable law. If the City disapproves any element of the work or property, or requires any change to it, the Subcontractor shall immediately eliminate the disapproved portions and make the required changes. If the City disapproves any materials, activities or services provided by third parties, the Subcontractor shall immediately cease using the materials and terminate the activities or services and shall, at the City's request, require that the Subcontractor obtain the return of materials from recipients or deliver such materials to the City or destroy them.

d. The City has the right to monitor from time to time the administration by the Subcontractor or any of its employees, agents or assigns of any programs or other work, including, without limitation, educational programs or trainings, funded in whole or part by the Funds, to ensure that the Subcontractor is performing such element of the Work Program, or causing such element of the Work Program to be performed, consistent with the terms and conditions of this agreement.

7. Federal Drug-Free Workplace Act. The Subcontractor 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 Subcontractor's premises. The Subcontractor agrees that any violation of this prohibition by the Subcontractor; its employees, agents or assigns will be deemed a material breach of this agreement.

8. Conflict of Interest.

a. Except for approved eligible administrative or personnel costs, no employee, agent, consultant officer or official of the City, the Subcontractor or of any other subrecipient of CDBG or ESGP funds who exercises or has exercised any functions or responsibilities with respect to activities assisted by CDBG or ESGP funds or who is in a position to participate in a decision making process or gain inside information with regard to such activities, shall obtain a personal or financial interest in or benefit from the activities assisted under this agreement or have an interest in any contract, subcontract or agreement with respect thereto, or in the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure and for one year thereafter. In order to carry out the purposes of this section, the Subcontractor shall incorporate, or cause to be incorporated, in all contracts, subcontracts and agreements relating to activities assisted under this agreement, a provision similar to that of this section. The Subcontractor shall be responsible for obtaining compliance with such provisions by the parties with whom it

contracts and, in the event of a breach, shall take prompt and diligent action to cause the breach to be remedied and compliance to be restored.

b. No member of the board of directors, governing officer or employee of the Subcontractor who exercises any functions or responsibilities in connection with the planning or carrying out of this agreement during his/her tenure or for one year thereafter, shall have any personal financial interest, direct or indirect, in any contract or subcontract, or the proceeds thereof for work to be performed in connection with the programs assisted under this agreement. The prohibition contained in this section shall prevent, among other things, any officer or board member or employee, during his/her tenure and for one year thereafter, from assuming a position, within or outside the Subcontractor, funded directly or indirectly with CDBG or ESGP funds. The Subcontractor shall take appropriate steps to assure compliance with this section. The Subcontractor agrees that it shall incorporate into every contract required to be in writing the following provision:

"Interest of Contractor and Employees - The contractor covenants that no person, including but not limited to, an officer or board member or employee of the Subcontractor, who presently exercises any functions or responsibilities in connection with the Program, shall have any personal financial interest, direct or indirect, in this agreement or current City/Subcontractor agreement. The contractor further covenants that he/she presently has no interest and shall not acquire any interest, direct or indirect, in the immediate neighborhood or any parcels therein, which would affect or conflict in any manner or degree with the performance of his/her services hereunder. The contractor further covenants that, in the performance of this contract, no person having any conflicting interest shall be employed. It shall be the responsibility of the contractor to make all reasonable and lawful efforts and inquiries in determining if any employee or prospective employee has any conflicting interest. Any interest or possible interest of the contractor or his/her employees must be disclosed to the Subcontractor and to the Mayor's Office of Housing."

Provided, however, that this paragraph shall be interpreted in such a manner so as not to unreasonably impede the statutory requirement that maximum opportunity be provided for employment of or participation by residents of the area.

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

9. Compliance with Lobbying Provisions. In addition to, and not in substitution for, other provisions of this agreement, the Subcontractor 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 Subcontractor 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.

2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of

Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. None of the funds, materials, property or services provided directly or indirectly under this Agreement shall be used for any partisan political activity, to further the election or defeat of any candidate for public office, or to support or defeat legislation pending before Congress.

4. The Corporation 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.

10. Tropical Hardwood and Virgin Redwood Ban. The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, the Subcontractor shall not permit any construction with the use of tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event the Subcontractor fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, the Subcontractor shall be liable for liquidated damages for each violation in any amount equal to the Subcontractor's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

11. False Claims. Pursuant to San Francisco Administrative Code Sections 6.80-6.83, any contractor, subcontractor, supplier, consultant or subconsultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor, supplier, consultant or subconsultant who submits a false claim shall also be liable to the City for the cost, including attorney's fees, of a civil action brought to recover any of those penalties or damages and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor, supplier, consultant or subconsultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor, supplier, consultant or subconsultant: (a) knowingly presents or causes to be presented to any officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses or causes to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the City; or (e) is beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of then false claim.

12. Professional Liability Insurance. If this agreement provides for professional services, the Subcontractor shall maintain professional liability insurance (errors and omissions) with limits not less than \$750,000 each occurrence, covering architectural, engineering, design, technical or professional services, as appropriate, to be performed under this agreement. The Subcontractor shall, upon request, furnish the Corporation and/or the City with a certificate for the above coverage. In the event that such insurance is not maintained, the Subcontractor shall terminate the applicable work until such time as the required insurance is obtained.

13. Earned Income Tax Credit.

a. The Subcontractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty (30) days following the date on which this agreement becomes effective (unless the Subcontractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by the Subcontractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this agreement.

b. Failure to comply with any requirement contained in subparagraph (a) above shall constitute a material breach by the Subcontractor of the terms of this agreement. If within thirty (30) days after the Subcontractor receives written notice of such a breach, the Subcontractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, the Subcontractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the Corporation and/or the City may pursue any rights or remedies available under this agreement or under applicable law.

c. Any Subcontract entered into by the Subcontractor shall require the Sub-subcontractor to comply, as to the Sub-subcontractor's Eligible Employees, with each of the terms of this Section.

d. Capitalized terms used in this Section and not defined in this agreement shall have the meanings assigned to such terms in Section 120 of the San Francisco Administrative Code.

14. **Supervision of Minors.** Grantee, and any subgrantees, shall comply with California Penal Code section 11105.3 and request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in Welfare and Institution Code section 15660(a) of any person who applies for employment or volunteer position with Grantee, or any subgrantee, in which he or she would have supervisory or disciplinary power over a minor under his or her care.

If Grantee, or any subgrantee, is providing services at a City park, playground, recreational center or beach (separately and collectively, "Recreational Site"), Grantee shall not hire, and shall prevent its subgrantees from hiring, any person for employment or volunteer position to provide those services if that person has been convicted of any offense that was listed in former Penal Code section 11105.3 (h)(1) or 11105.3(h)(3).

If Grantee, or any of its subgrantees, hires an employee or volunteer to provide services to minors at any location other than a Recreational Site, and that employee or volunteer has been convicted of an offense specified in Penal Code section 11105.3(c), then Grantee shall comply, and cause its subgrantees to comply with that section and provide written notice to the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer not less than ten (10) days prior to the day the employee or volunteer begins his or her duties or tasks. Grantee shall provide, or cause its subgrantees to provide City with a copy of any such notice at the same time that it provides notice to any parent or guardian.

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

**If this agreement relates to construction work to be performed by Subcontractor, the following additional provisions shall apply:**

15. **Ten Percent Retention and Bonding Requirements.** Notwithstanding anything to the contrary in this agreement, the Corporation shall retain an amount equal to ten percent (10%) of the total construction cost until final completion of the work, and each progress payment during construction shall retain the required ten percent of the cost of the work covered by that payment. The final payment to the Subcontractor shall be made only following the City'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 City may determine. If the contract amount is expected to cost an amount between \$20,000 and \$100,000, the City may require the Subcontractor to post a performance bond and a labor and material payment bond, in a form approved by the City, in amounts not less than 100% of the contract price for the work. For all contracts exceeding \$100,000, the Subcontractor must provide a performance bond and a labor and material payment bond equal to 100% of the contract price for the work.

16. **Insurance.** In addition to any other insurance required by law or the agreement, the Subcontractor shall maintain, throughout the term of the construction contract, insurance as follows: (a) Workers' Compensation insurance at statutory limits, including coverage for Employer's Liability, with limits of not less than \$1,000,000 each accident; (b) Comprehensive General Liability insurance with limits of not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage, including coverage for Contractual Liability, Independent Contractors, Broad Form Property Damage, Products and Completed Operations; (c) Comprehensive Auto Liability insurance with limits of not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage, including coverage for owned, non-owned and hired vehicles; and (d) Builder's All Risk Insurance for loss or damage to the work in progress for the amount of the contract.

The Subcontractor shall furnish the Corporation with certificates of insurance and additional insured policy endorsements from insurers in a form acceptable to the City for the above coverage prior to the commencement of any work, and the Subcontractor shall verify that the above insurance requirements are maintained throughout the term of the construction contract and during all construction. The Subcontractor shall include the City as an additional insured on all

of the above policies. Upon request, the Subcontractor shall furnish copies of such certificates of insurance and endorsements to the City. In the event the above insurance is not maintained for any reason, the Subcontractor shall immediately cease all construction activities until such time as the required insurance is resumed. To the extent that any insurance proceeds are not used to rebuild the project, any such proceeds shall be paid to the Corporation, which shall, in return, reimburse the City for amounts disbursed by the City to the Corporation.

17. HUD Section 3. If applicable under 24 Code of Federal Regulations (“C.F.R.”) Part 135, the Subcontractor 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 Subcontractor has a collective bargaining agreement or other similar understanding, if any, a notice advising the labor organization of workers representative of the Subcontractor'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 Subcontractor shall not subcontract with any subcontractor where the Subcontractor 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 contractor is selected but before the contract is executed, and (2) with persons other than those to whom the Part 135 Regulations require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under the Part 135 Regulations.

f. The Subcontractor 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.

18. First Source Hiring Requirements. If the Corporation receives Three Hundred Fifty Thousand Dollars (\$350,000) or more from the City, then the following provisions shall apply:

a. The Subcontractor shall comply with the hiring requirements imposed by the City's First Source Hiring Ordinance (San Francisco Administrative Code Chapter 83), which are incorporated herein by this reference. The Subcontractor shall notify the City's Workforce Development System (the “WDS”) of all projected Entry Level Positions and the approximate date such positions will be available. It shall also notify the WDS of all vacancies or new positions for work related to the construction contract, and shall offer the WDS the first opportunity to provide qualified Economically Disadvantaged Individuals for employment in these positions. The Subcontractor shall not publicize or otherwise post such vacancies except as specified in Appendix G (the “First Source Hiring Agreement”) attached to the Short Form Agreement, the terms of which are incorporated herein by this reference. Upon request by MOH, the Subcontractor agrees to separately execute the attached First Source Hiring Agreement, although the lack of such a separate execution shall not affect the requirements of the agreement as incorporated herein.

b. The Subcontractor shall keep, and provide to the City, accurate records demonstrating its compliance with the First Source Hiring Ordinance. A failure to abide by the provisions of the Section 11.20 may result in the imposition of liquidated damages in the amount of \$2,070 for every new hire for each Entry Level Position improperly withheld from the First Source Hiring process. Additionally, the Subcontractor may be subject to sanctions and penalties enumerated in San Francisco Administrative Code. The Subcontractor shall include these provisions in any contracts it enters into, and any subcontracts, relating to the Work Program. The Subcontractor shall be responsible for ensuring compliance by all such subcontractors.

c. To the extent they overlap, the Subcontractor may comply with the requirements of this section by complying with the Section 3 requirements set forth above.

19. **Labor Standards.** The Subcontractor 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.

20. **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.

21. **Nondisclosure of Private Information.** As of March 5, 2005, Grantee agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the "Nondisclosure of Private Information Ordinance"), including the remedies provided. The provisions of the Nondisclosure of Private Information Ordinance are incorporated herein by reference and made a part of this Agreement as though fully set forth. Capitalized terms used in this section and not defined in this Agreement shall have the meanings assigned to such terms in the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the Nondisclosure of Private Information Ordinance, Contractor agrees to all of the following:

(a) Neither Grantee nor any of its Subcontractors shall disclose Private Information obtained from the City in the performance of this Agreement to any other Subcontractor, person, or other entity, unless one of the following is true:

(i) The disclosure is authorized by this Agreement;

(ii) The Grantee received advance written approval from the Contracting Department to disclose the information; or

(iii) The disclosure is required by law or judicial order.

(b) Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement. Any disclosure or use of Private Information authorized by a Contracting Department shall be in accordance with any conditions or restrictions stated in the approval.

(c) Private Information shall mean any information that: (1) could be used to identify an individual, including without limitation, name, address, social security number, medical information, financial information, date and location of birth, and names of relatives; or (2) the law forbids any person from disclosing.

(d) Any failure of Grantee to comply with the Nondisclosure of Private Information Ordinance shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under

equity or law, the City may terminate this Agreement, debar Grantee, or bring a false claim action against Grantee.

22. **Public Access to Meetings and Records.** If the Grantee receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, the Grantee shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Grantee agrees to open its meetings and records to the public in the manner set forth in Sections 12L.4 and 12L.5 of the Administrative Code. The Grantee further agrees to make good-faith efforts to promote community membership on its Board of Directors in the manner set forth in Section 12L.6 of the Administrative Code. The Grantee acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Grantee further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.
23. **Graffiti Removal.** Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Contractor to comply with this section of this Agreement shall constitute an Event of Default of this Agreement .

24. **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.

25. **Additional Federal Requirements.** The Subcontractor agrees to comply with the following requirements insofar as they apply to the performance of this Agreement: (a) the Clean Air Act (42 U.S.C. 7401 et seq.); (b) Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.); (c) Environmental Protection Agency regulations pursuant to

40 C.F.R. Part 50; (d) Flood Disaster Protection Act of 1973 (42 U.S.C. 4001); (e) HUD's lead based paint regulations at 24 C.F.R. 570.608; and (f) the National Historic Preservation Act of 1966 (16 U.S.C. 470) and the procedures set forth in 36 C.F.R. Part 800 on the Historic Preservation Procedures for Protection of Historic Properties.