

STANDARD AGREEMENT
between the City and County of San Francisco
and the County of San Mateo
for the Disbursement
of COMPREHENSIVE AIDS RESOURCES EMERGENCY (CARE) Grant Funds
from the Health Resources and Services Administration

THIS AGREEMENT made this 1st day of March 2010 by and between the
CITY AND COUNTY OF SAN FRANCISCO, through its DEPARTMENT OF PUBLIC
HEALTH, HIV HEALTH SERVICES, hereinafter referred to as "City" and

The County of San Mateo

hereinafter referred to as "Grantee."

1. AUTHORITY

This Agreement is entered into pursuant to the provisions of the Reauthorization of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 [hereafter, "CARE Act"].

2. PURPOSE OF THE CARE ACT

The purpose of the CARE Act is to provide emergency assistance to eligible metropolitan areas that are disproportionately affected by the Human Immunodeficiency Virus epidemic and to make financial assistance available to States and other public or private nonprofit entities to provide for the development, organization, coordination and operation of more effective and cost efficient systems for the delivery of essential services to individuals and families with HIV disease.

3. PAYMENT OF FUNDS

Contingent on availability of funds, City agrees to pay Grantee \$2,030,578 as described in Attachment I of this document. City incurs no obligation under this Agreement to pay this amount unless and until the City has been awarded and has received specific funding for this grantee by the Department of Health and Human Services/Public Health Service.

4. COMPLIANCE WITH CARE ACT PROVISIONS

The CARE Act (Sections 2601 - 2608, Public Law 101-381, August 18, 1990) imposes restrictions on the expenditure of CARE ACT funds and imposes requirements on the recipients of such funds. Grantee hereby agrees to fully comply with the restrictions and requirements of that act, including amendments.

It is understood and agreed that Grantee will appoint an HIV Planning Council, pursuant to the requirements of the CARE Act, to determine the funding priorities and implementation of CARE funds in its jurisdiction. Grantee agrees that its HIV Planning Council will

consult with San Francisco's HIV Health Services Planning Council prior to making final determinations.

5. FISCAL PROVISIONS

This Agreement is subject to the budget and fiscal provisions of the Charter of the City. Any amount of the City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in this Agreement. This section controls against any and all other provisions of the Agreement.

6. APPLICABLE LAW

This Agreement shall be deemed to be made in and shall be construed in accordance with the laws of the State of California.

7. NON-DISCRIMINATION

Grantee agrees not to discriminate on the grounds or because of race, color, creed, national origin, ancestry, age, sex, sexual orientation, gender identity, disability, AIDS or ARC in the course of providing services funded under this Agreement.

The provisions of Chapter 12B (Nondiscrimination in Contracts) of the San Francisco Administrative Code, including any amendments which may hereafter be adopted, are incorporated herein by this reference as though fully set forth. The parties agree that this Agreement shall be interpreted as containing every applicable requirement for Agreements set forth in those provisions. Grantee agrees to comply fully with those provisions.

The failure of Grantee to comply with any of those provisions shall be deemed a material breach of Agreement. Pursuant to Chapter 12B.2(h), a penalty of fifty dollars (\$50.00) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be deducted from payments due to the Grantee. Grantee acknowledges and agrees that the liquidated damages assessed shall be payable to City upon demand and may be set off against any monies due to Grantee from any Agreement with City.

Grantee shall provide in every contract for services in connection with the project that in the event any bidder, contractor, or subcontractor fails to comply in good faith with any of the provisions of this Chapter 12B.2(h), the bidder, contractor, or subcontractor shall be liable for a penalty of fifty dollars (\$50.00) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be deducted from payments due to the Grantee.

8. DUTY TO COMPLETE SERVICES FUNDED

Grantee agrees to provide the services funded by this Agreement by February 28, 2011.

9. AUDITS

Grantee agrees to keep and maintain and make available to City and its agents accurate books, fiscal records, and all other material relative to the project. Grantee will permit the City to audit, examine and make excerpts and transcripts from such records, and to make audits of all invoices, materials, payrolls, records of personnel and other data related to all matters covered by this Agreement. Grantee shall maintain such data and records in an accessible location and condition for a period of not less than five years after completion of the project. Grantee shall include in contracts with other parties for the provision of services funded by this Agreement this same requirement in order that City will have full and complete access to such contractor's books, records and other material. Public Health Service shall have the same rights conferred upon City by this section.

10. DISALLOWANCE AND RECOUPMENT

If City disallows any amount paid to the Grantee for the project because of Grantee's failure to comply with this Agreement, the CARE Act, or any other applicable law or regulation, or if the Public Health Service disallows any amount or determines that any funds were used in violation of any legal or contractual requirement, Grantee shall promptly refund the disallowed amount to City upon request. This section is intended to include, among other disallowances, any disallowance by the Public Health Service based on Grantee's failure to use grant funds for purposes associated with the care of persons with HIV. City shall be entitled to take any and all available administrative and judicial actions in order to recover the amount disallowed, including offsetting the amount disallowed from any payment due Grantee under any agreement between City and Grantee or under any program involving Grantee in which funds would otherwise be paid to Grantee. Once City recoups funds from Grantee following the disallowance of any amount paid to the Grantee for its non-compliance as provided herein, the City, at its option, shall have the right to terminate this Agreement by written notice.

It is understood and agreed that the restrictions and requirements applicable to Grantee with respect to the funds provided under this Agreement also apply to any other party with whom Grantee contracts or to whom Grantee provides funds obtained from City under this Agreement. If any third party violates any restriction or requirement, Grantee shall be held liable for such violation. City may disallow amounts paid to Grantee based on the violations of such third parties.

11. GRANTEE'S DEFAULT

Failure or refusal of the Grantee or any of Grantee's contractors or other parties who receive funds provided by this Agreement from Grantee to perform or do any act required by this Agreement shall constitute a default. In the event of any default, in addition to any other remedy available to the City, the City may demand in writing that the Grantee shall promptly return to the City the funds provided to the Grantee under this Agreement. Upon receipt of such a written demand, the Grantee shall promptly return to the City the full amount demanded.

The City shall be entitled to take any and all available administrative and judicial actions in order to recover the amount demanded, including offsetting the amount disallowed from any payment due to the Grantee under any agreement between the City and the Grantee or under any program involving the Grantee in which funds would otherwise be paid to the Grantee. In the event of a default, the City shall be entitled, at its option, to terminate this Agreement by written notice. Such notice shall be given only after the City has given written notice to grantee of the default and provided thirty (30) days in which to correct the default.

12. BANKRUPTCY

In the event that the Grantee shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights or creditors, then the City may, at its option, require the return of any and all funds provided to the Grantee under this Agreement and may, again at its option, terminate this Agreement by written notice.

13. SITE VISITS

Grantee agrees to fully cooperate with City and Public Health Service if City or Public Health Service, or both, notify Grantee that it wishes to visit any site where services funded by this Agreement are provided. If Public Health Service notifies Grantee that it wishes to make a site visit, Grantee shall inform the City within five days of such notification, and in any event, prior to the scheduled visit.

14. REPORTS

Grantee agrees to expend all grant funds as specified in Section 3 by February 28, 2011.

Grantee further agrees to provide any additional report or information in writing when reasonably requested to do so by City or Public Health Service. The timely submission of all reports is a necessary and material term and condition of this Agreement.

15. INDEPENDENT CONTRACTOR

Grantee shall be liable for any act or acts of its own, or its officer, agents or employees, and nothing contained herein shall be construed as creating the relationship of employer and employee between City and Grantee or its officers, agents and employees. Grantee shall be deemed at all times to be an independent Contractor and shall be wholly responsible for the manner in which it performs the project required of it by the terms of Agreement.

Grantee has and hereby retains the right to exercise full control supervision of Grantee's services and full control and supervision of the project services and full control of employment, direction, compensation and discharge of all person assisting it in the performance of project services hereunder. Grantee agrees to be solely responsible for all

matters relating to payment of employees, including compliance with Social Security, withholding and all other regulations governing such matters. Grantee agrees to be solely responsible for its own acts and those of its subordinates, employees and agents during the life of this Agreement.

16. GRANTEE SOLE RESPONSIBILITY

Grantee shall take all responsibility for its work, and must bear all losses and damages directly or indirectly resulting to it, to any of its contractors or subcontractors, to City, its officers, representatives, agents and employees, on account of any act, error or omission of Grantee in the performance of this Agreement.

17. INSURANCE

Grantee agrees to maintain such insurance as will fully protect both Grantee and City from any and all claims made by anyone whomsoever which may arise from the operations carried on under this Agreement. Grantee agrees to the insurance provision requirements as stated in Attachment II, attached hereto and incorporated by reference as though fully set forth herein.

18. INDEMNITY PROVISION

Grantee shall keep, defend, indemnify and hold harmless City and all of its officers, agents and employees of City from any and all claims and liabilities for damages of any kind whatsoever to all persons, corporations, and partnerships including but not limited to employees of Grantee and heirs of employees of Grantee and employees of City and heirs of employees of City arising out of and in the course of the performance of this Agreement.

Grantee agrees to indemnify, to assume the defense of (if requested) and to hold harmless the City, its officers, representatives, agents and employees from every claim, loss, damage, injury, expense (including attorney fees), judgment and direct or vicarious liability of every kind, nature, and description arising in whole or in part from the performance of this Agreement, 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 City, its officers, representatives, agents, and employees.

The aforementioned indemnity shall extend to, but shall not be limited to, any negligent or intentional conduct whatsoever.

Insurance contracts required under this Agreement do not relieve Grantee or its contractors, subcontractors or consultants from liability under this section.

19. ADMINISTRATIVE REMEDY FOR AGREEMENT INTERPRETATION

Should any questions arise as to the meaning and intent of this Agreement, the matter shall be referred to the Director of Public Health, who shall decide the true meaning and intent of the Agreement, and his/her decision shall be final and conclusive.

20. NOTICES TO THE PARTIES AND CONTACTS

All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage paid, and registered as follows:

TO CITY: Department of Public Health AIDS Office
Contracts Unit
25 Van Ness Avenue, Suite 500
San Francisco, CA 94102

TO GRANTEE: Matt Geltmaker, STD/HIV Program Director
San Mateo County AIDS Program
225 West 37th Avenue
San Mateo, CA 94403

For questions on the CARE Act legislation contact Bill Blum, San Francisco Department of Public Health, at (415) 554-9105. For general questions on CARE Act grant funding of non-City components of the San Francisco Eligible Metropolitan Area contact Hilda Jones, AIDS Office, at (415) 255-3924. For questions on this Grantee Agreement contact Matt Geltmaker, San Mateo County AIDS Program, at (650) 573-2077.

21. WAIVER

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions hereafter.

22. ATTACHMENTS

Attachments to this Agreement:

- I. Budget of FY 2010-2011 Ryan White Part A funds available to Grantee.
- II. Insurance Requirements and certificates.

23. NO THIRD PARTY RIGHTS AGAINST CITY

Nothing contained in this Agreement shall create or justify any claim against City by any person Grantee may have employed or with whom Grantee may have contracted relative to purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services, and Grantee shall include similar provisions in all contracts it enters into with respect to this Agreement.

24. LIMITED OBLIGATIONS OF THE CITY

City's sole obligation under this Agreement is limited to the provision of funds described in Section 3 of this Agreement. Under no circumstances, including breach by City of this Agreement shall City be liable to the Grantee for any damages whatsoever arising out of any action or failure to act by City in connection with this Agreement other than the obligation to pay Grantee the amount set forth in Section 3.

25. SEVERABILITY

The invalidity or unenforceability of any one or more provisions of this Agreement will in no way affect any other provision.

26. GUARANTEED MAXIMUM COSTS

- a. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.
- b. Except as may be provided by City ordinances governing emergency conditions, the City and County and its employees and officers are not authorized to request the Grantee to perform services or to provide materials, equipment and supplies that would result in Grantee performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract unless the Agreement is amended in writing and approved as required by law to authorize the additional services, materials, equipment or supplies. The City and County is not required to reimburse Grantee for services, materials, equipment or supplies that are provided by Grantee which are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract and which were not approved by a written amendment to the Agreement having been lawfully executed by the City and County.
- c. The City and County and its employees and officers are not authorized to offer or promise to Grantee additional funding for the contract which would exceed the maximum amount of funding provided for in the contract for the Grantee's performance under the contract. Additional funding for the contract in excess of the maximum provided in the contract shall require lawful approval and certification by the Controller of the City and County of San Francisco. The City and County is not required to honor any offered or promised additional funding for a contract which exceeds the maximum provided in the contract which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained.
- d. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

27. SUBMITTING FALSE CLAIMS; MONETARY PENALTIES

Any Grantee, subcontractor or consultant who commits any of the following acts shall be liable to the City for three times the amount of damages which the City sustains because of the act of that Grantee, subcontractor or consultant. A Grantee, subcontractor or consultant who commits any of the following acts shall also be liable to the City for the costs, 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 ten thousand dollars (\$10,000) for each false claim;

- a. Knowingly presents or causes to be presented to an 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.
- e. Is a 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.

28. SUNSHINE ORDINANCE

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

29. GRIEVANCE PROCEDURE

GRANTEE agrees to establish and maintain a written Client Grievance Procedure that is consistent with the CITY's "Minimum Standards for Grievance Procedure." GRANTEE shall provide a copy of this Client Grievance Procedure to all service providers under this Agreement. The grievance procedure shall provide for final resolution of all grievances by the GRANTEE.

30. NOTIFICATION OF LIMITATIONS ON CONTRIBUTIONS

This paragraph applies if this grant is in excess of \$50,000 over a 12-month period or less and is for: (1) personal services; or (2) the selling or furnishing of any material, supplies or equipment; or (3) any combination of personal services and the selling or furnishing of any material, supplies or equipment. San Francisco Campaign and Governmental Conduct Code (the "Conduct Code") Section 3.700 et. seq., and San Francisco Ethics Commission Regulations 3.710(a)-1 - 3.730-1, prohibit the public officials who approved this contract from receiving: (1) gifts, honoraria, emoluments or pecuniary benefits of a value in excess of \$50; (2) any employment for compensation; or (3) any campaign contributions for any elective office for a period of up to six years from individuals and entities who are "public benefit recipients" of the contract. Public benefit recipients of the contract are: (1) the individual, corporation, firm, partnership, association, or other person or entity that is a party to the contract; (2) an individual or entity that has a direct 10% equity, or direct 10% participation, or direct 10% revenue interest in that party at the time the public benefit is awarded; or (3) an individual who is a trustee, director, partner or officer of the contracting party at the time the public benefit is awarded.

Contractor understands that any public official who approved this contract may not accept campaign contributions, gifts, or future employment from Contractor except as provided under the Conduct Code. Contractor agrees to notify any other individuals or entities that may be deemed "public benefit recipients" under the Conduct Code because of this contract. Upon request, Contractor agrees to furnish, before this contract is entered into, such information as any public official approving this contract may require in order to ensure such official's compliance with the Conduct Code. Upon request, the City agrees to provide, before this contract is entered into, Contractor with a list of public officials who, under the Conduct Code, approved this contract. Failure of any public official who approved this contract to abide by the Conduct Code shall not constitute a breach by either the City or Contractor of this contract. Notwithstanding anything to the contrary in this contract, neither party shall have the right to terminate the contract due to any failure by the other party to provide the information described in this paragraph.

31. HIPAA

The parties acknowledge that CITY is a Covered Entity as defined in the Healthcare Insurance Portability and Accountability Act of 1996 ("HIPAA") and is therefore required to abide by the Privacy Rule contained therein. The parties further agree that CONTRACTOR falls within the following definition under the HIPAA regulations:

- A Covered Entity subject to HIPAA and the Privacy Rule contained therein;
- A Business Associate subject to the terms set forth in Exhibit E;
- Not Applicable, CONTRACTOR will not have access to Protected Health Information.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first herein above mentioned.

RECOMMENDED;

APPROVED:
Grantee:

County of San Mateo

MITCHELL H. KATZ, M.D.
Director, Department of Health

(Title)

APPROVED AS TO FORM
Dennis J. Herrera, City Attorney

(Signature)

94-6000532

Federal ID or Social Security No.

By _____
Aleeta Van Runkle
Deputy City Attorney

ATTACHMENT I

SAN MATEO COUNTY STD/HIV PROGRAM
BUDGET SUMMARY FOR MARCH 1, 2010 THROUGH FEBRUARY 28, 2011

III. SERVICE CATEGORY - MENTAL HEALTH

UOS = 851 encounters, UDC = 163

Personnel	0
Operating Expenses	0
Contracts	88,224
Fixed Assets	0
Indirect Costs	0

Total for Mental Health 88,224

IV. SERVICES CATEGORY - MEDICAL CASE MANAGEMENT

UOS = 2,005 hours; UDC = 345

Personnel	196,564
Operating Expenses	2,756
Contracts	0
Fixed Assets	0
Indirect Costs	0

Total Case Management 199,320

V. SERVICE CATEGORY - SUBSTANCE ABUSE, OUTPATIENT

UOS = 875 hours, UDC = 81

Personnel	0
Operating Expenses	0
Contracts	86,092
Fixed Assets	0
Indirect Costs	4,305

Total Substance Abuse 90,397

VI. SERVICE CATEGORY - EMERGENCY FINANCIAL ASSISTANCE

UOS = 590 transaction/encounter, UDC = 130

Personnel	
Operating Expenses	
Contracts	45,902
Fixed Assets	0
Indirect Costs	4,131

Total Direct Emergency Assistance 50,033

ATTACHMENT I

SAN MATEO COUNTY STD/HIV PROGRAM
BUDGET SUMMARY FOR MARCH 1, 2010 THROUGH FEBRUARY 28, 2011

VII. SERVICE CATEGORY - FOOD BANK/HOME DELIVERED MEALS

UOS = 8,109 grocery bags, UDC = 178

Personnel	0
Operating Expenses	0
Contracts	110,092
Fixed Assets	
Indirect Costs	9,908

Total Food Services 120,000

VIII. SERVICE CATEGORY - HOUSING SERVICES

UOS = 275 night, UDC = 23

Personnel	0
Operating Expenses	0
Contracts	10,210
Fixed Assets	0
Indirect Costs	919

Total Residential Assistance 11,129

IX. SERVICE CATEGORY - SUBSTANCE ABUSE, RESIDENTIAL

UOS = 890 night beds, UDC = 15

Personnel	0
Operating Expenses	0
Contracts	69,700
Fixed Assets	0
Indirect Costs	6,273

Total Substance Abuse 75,973