

**CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT OF CHILDREN, YOUTH, AND THEIR FAMILIES**

SECOND MEMORANDUM OF UNDERSTANDING

between

CITY AND COUNTY OF SAN FRANCISCO

and

SAN FRANCISCO COMMUNITY COLLEGE DISTRICT

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THIS MEMORANDUM OF UNDERSTANDING (this “Agreement”) is made this twenty-second day of August, 2019, in the City and County of San Francisco, State of California, by and between the **SAN FRANCISCO COMMUNITY COLLEGE DISTRICT** (“City College”) and the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (“City”),

WHEREAS the City’s Board of Supervisors, on September 27, 2016, approved Ordinance No. 186-16, which established the San Francisco City College Enrollment Fee Assistance Fund; and

WHEREAS the City intended that the fund established by Ordinance No. 186-16 would receive future funding to provide financial assistance for San Francisco residents attending City College – the Free City College Program – subject to annual appropriations by the Mayor and San Francisco Board of Supervisors through the City’s budget process; and

WHEREAS the purpose of the Free City College Program is to fund enrollment fees and other education-related financial support for San Francisco residents enrolled in credit courses at City College; and

WHEREAS the City and City College seek to integrate an equity-focused lens to the Free City College Program through the incorporation of annual progress reports on student equity outcomes for historically underrepresented student populations; and

WHEREAS City College shall implement strategies to leverage the Free City College program to reduce and eliminate achievement gaps for student groups that are underrepresented, including but not limited to low-income students, African-American, Latinx, Pacific Islander, Native American, current or former foster youth, students with disabilities, veterans, and undocumented students; and

WHEREAS the City’s Board of Supervisors, on January 10, 2017, approved Ordinance No. 03-17, a supplemental appropriation of \$9,000,000 of real property transfer tax revenue in Fiscal Year 2016-17 to provide funds to implement the Free City College Program for 2017-19 and on June 13, 2017, approved Ordinance No. 125-17, that renamed the San Francisco City College Enrollment Fee Assistance Fund as the San Francisco City College Financial Assistance Fund (“Fund”), and made other modifications to conform the Fund’s operation to the terms of this Memorandum of Understanding and on July 26, 2019 approved Resolution No. 190735 (attached hereto) extending the Program for ten years and increasing the funding; and

WHEREAS by Ordinance No. 190730 (attached hereto), formally adopted by the San Francisco Board of Supervisors and approved by the Mayor, the Board re-established the San Francisco City College Financial Assistance Fund;

WHEREAS the City and City College entered into a Memorandum of Understanding dated July 13, 2017 for spring and fall semesters for the period from July 1, 2017 through June 30, 2019; and

WHEREAS the City and City College entered into a First Amendment to the Memorandum of Understanding dated February 15, 2019 to fund Free City College Summer Session for the school year of 2018-2019 and increase the funding to \$12,433,904; and

WHEREAS the City and City College entered into a Second Amendment to the Memorandum of Understanding dated July 1, 2019 to extend the Memorandum of Understanding to September 30, 2019; and

WHEREAS the Free City College Program is an entitlement program to pay all enrollment fees for credit classes for California residents living in San Francisco who do not receive grants or financial aid that would cover such fees; and

WHEREAS for students who are California residents living in San Francisco enrolled in credit classes who receive grants or financial aid that cover enrollment fees, the Free City College Program is an entitlement program to provide grants for education-related expenses other than enrollment fees; and,

WHEREAS City College recognizes the benefit for students to receive additional state and federal financial aid and commits to providing outreach to students to complete necessary applications to secure additional financial aid; and

WHEREAS the City established a reserve for the Free City College Program and the City and City College have developed written guidelines that govern access to those reserve funds; and

WHEREAS the parties desire to enter into an agreement to support the Free City College Program for the next ten years for all credit classes offered by City College to San Francisco residents; and

WHEREAS the City desires to provide the Free City College Program with five million four hundred thousand dollars (\$5.4 million) to address the shortfall for the period July 1, 2017- June 30, 2019; and

WHEREAS the City desires to provide such funds on the terms and conditions set forth herein; and

WHEREAS the parties now desire to enter into a Second Memorandum of Understanding (this Agreement) for the period August 22, 2019 through August 21, 2029 that will fully fund the Free City College Program on the terms and conditions set forth herein:

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

ARTICLE 1 - DEFINITIONS

1.1 Specific Terms.

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

- a) **“Academic Year”** shall encompass Fall, Spring, and Summer, including intercessions, if any.
- b) **“ADA”** shall mean the Americans with Disabilities Act (including all rules and regulations thereunder) and all other applicable federal, state and local disability rights legislation, as the same may be amended, modified or supplemented from time to time.
- c) **“Budget”** shall mean the budget attached hereto as part of Appendix B.
- d) **“Charter”** shall mean the Charter of City.
- e) **“City College”** shall have the meaning as “Grantee” if used in this Agreement, as certain City contracting requirements also apply to grants of the City of San Francisco.

- f) “**Controller**” shall mean the Controller of City.”
- g) “**DCYF**” shall mean Department of Children, Youth and Their Families.
- h) “**Eligible Expenses**” shall have the meaning set forth in Appendix A.
- i) “**Eligible Student**” shall mean Enrolled Students who are:
 1. San Francisco residents;
 2. California residents for tuition purposes or qualify for a non-residents exemption (AB540, AB13, AB2000); and
 3. Have no outstanding holds.
- j) “**Enrolled Student**” shall mean students enrolled in credit classes at City College in compliance with City College established policies.
- k) “**Enrollment Fee**” shall mean the fee established by the California Community Colleges Board of Governors pursuant to California Education Code Section 76300(b)(1). The enrollment fee is currently \$46 per credit unit. If the Board of Governors increases or reduces the Enrollment Fee, the revised Enrollment Fee shall apply to this Agreement.
- l) “**Fiscal Year**” shall mean each period of twelve (12) calendar months commencing on July 1 and ending on June 30 during which all or any portion of this Agreement is in effect.
- m) “**Funds**” shall mean any and all funds allocated or disbursed to City College under this Agreement.
- n) “**Funding Request**” shall have the meaning set forth in Section 5.3(a).
- o) “**Grant**” shall mean this Agreement.
- p) “**Grant Funds**” shall mean any and all funds allocated or disbursed to Grantee under this Agreement.
- q) “**Grant Plan**” shall have the meaning set forth in Appendix B.
- r) “**Indemnified Parties**” shall mean: (i) City, including the Department and all commissions, departments, agencies and other subdivisions of City; (ii) City's elected officials, directors, officers, employees, agents, successors and assigns; and (iii) all persons or entities acting on behalf of any of the foregoing.
- s) “**Losses**” shall mean any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, judgments, fees, expenses and costs of whatsoever kind and nature (including legal fees and expenses and costs of investigation, of prosecuting or defending any Loss described above) whether or not such Loss be founded or unfounded, of whatsoever kind and nature.
- t) “**Program**” shall mean the Free City College Program.
- u) “**Student Equity Plan**” shall mean the College’s Student Equity Plan required by the State Chancellor’s Office.

1.2 Additional Terms.

The terms “as directed,” “as required” or “as permitted” and similar terms shall refer to the direction, requirement, or permission of the Department. The terms “sufficient,” “necessary” or “proper” and similar terms shall mean sufficient, necessary or proper in the sole judgment of the Department. The terms “approval,” “acceptable” or “satisfactory” or similar terms shall mean approved by, or acceptable to, or satisfactory to the Department. The terms “include,” “included” or “including” and similar terms

shall be deemed to be followed by the words “without limitation”. The use of the term “subcontractor,” “successor” or “assign” herein refers only to a subcontractor (“subgrantee”), successor or assign expressly permitted under Article 13.

1.3 References to this Agreement.

References to this Agreement include: (a) any and all appendices, exhibits, schedules, attachments hereto; (b) any and all statutes, ordinances, regulations or other documents expressly incorporated by reference herein; and (c) any and all amendments, modifications or supplements hereto made in accordance with Section 17.2. References to articles, sections, subsections or appendices refer to articles, sections or subsections of or appendices to this Agreement, unless otherwise expressly stated. Terms such as “hereunder,” herein or “hereto” refer to this Agreement as a whole.

ARTICLE 2 - APPROPRIATION AND CERTIFICATION OF GRANT FUNDS; LIMITATIONS ON CITY'S OBLIGATIONS

2.1 Risk of Non-Appropriation of Grant Funds.

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

2.2 Certification of Controller.

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

2.3 Automatic Termination for Nonappropriation of Funds.

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

2.4 Superseding of Conflicting Provisions.

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

2.5 Maximum Costs.

Except as may be provided by City ordinances governing emergency conditions, City and its employees and officers are not authorized to request Grantee to perform services or to provide materials, equipment and supplies that would result in Grantee performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies specified in this Agreement unless this Agreement is amended in writing and approved as required by law to authorize the additional services, materials, equipment or supplies. City is not required to pay Grantee for services, materials, equipment or supplies provided by Grantee that are beyond the scope of the services, materials, equipment and supplies agreed upon herein and not approved by a written amendment to this Agreement lawfully executed by City. City and its employees and officers are not authorized to offer or promise to Grantee additional funding for this Agreement that exceeds the maximum amount of funding provided for

herein. Additional funding for this Agreement in excess of the maximum provided herein shall require lawful approval and certification by the Controller. City is not required to honor any offered or promised additional funding which exceeds the maximum provided in this Agreement which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained. The Controller is not authorized to make payments on any agreement for which funds have not been certified as available in the budget or by supplemental appropriation.

ARTICLE 3 - TERM

3.1 Effective Date.

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

3.2 Duration of Term.

The term of this Agreement shall commence on August 22, 2019 and shall end at 11:59 p.m. San Francisco time on August 21, 2029.

ARTICLE 4 - IMPLEMENTATION OF GRANT PLAN

4.1 Implementation of Grant Plan; Cooperation with Monitoring.

Grantee shall diligently and in good faith implement the Grant Plan, attached hereto as Appendix A (“Grant Plan”) on the terms and conditions set forth in this Agreement. Grantee shall not materially change the nature or scope of the Grant Plan during the term of this Agreement without the prior written consent of City. Grantee shall promptly comply with all standards, specifications and formats of City, as they may from time to time exist, related to evaluation and monitoring of the Grant Plan and shall cooperate in good faith with City in any evaluation or monitoring activities conducted or authorized by City, including evaluation of the efficacy of the Program as measured against the Student Equity Plan.

4.2 Grantee's Personnel.

The Grant Plan shall be implemented only by competent personnel under the direction and supervision of Grantee.

4.3 Ownership of Results. (Reserved)

4.4 Works for Hire. (Reserved)

4.5 Publications and Work Product. (Reserved)

ARTICLE 5 - USE AND DISBURSEMENT OF GRANT FUNDS

5.1 Maximum Amount of Grant Funds.

In no event shall the amount of Grant Funds disbursed hereunder exceed the amount identified in Appendix A (Grant Plan).

5.2 Use of Grant Funds.

Grantee shall use the Grant Funds only for Eligible Expenses as set forth in Appendix B (“Disbursement Procedures”) and for no other purpose. Grantee shall expend the Grant Funds in accordance with the Budget and shall obtain the prior approval of City before transferring expenditures from one-line item to another within the Budget.³⁰ For clarity, any use of grant funds for a program expansion or adjustment requires a formal modification of this agreement.

5.3 Disbursement Procedures. (Reserved – Detailed in Appendix B [“Disbursement Procedures”])

5.4 State or Federal Funds

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

(b) **Grant Terms.** The funding for this Agreement is provided in full or in part by a Federal or State Grant to the City. As part of the terms of receiving the funds, the City is required to incorporate some of the terms into this Agreement and include certain reporting requirements. The incorporated terms and requirements are stated in Appendix G, "State/Federal Funding Terms."

ARTICLE 6 - REPORTING REQUIREMENTS; AUDITS; PENALTIES FOR FALSE CLAIMS

6.1 Regular Reports.

Reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages, to the maximum extent possible.

6.2 Organizational Documents. Reserved

6.3 Notification of Defaults or Changes in Circumstances.

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

6.4 Financial Statements.

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

6.5 Books and Records.

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

6.6 Inspection and Audit.

Grantee shall make available to City, its employees and authorized representatives, during regular business hours all of the files, records, books, invoices, documents, payrolls and other data required to be established and maintained by Grantee under Section 6.5. Grantee shall permit City, its employees and authorized representatives to inspect, audit, examine and make excerpts and transcripts from any of the foregoing. The rights of City pursuant to this Section shall remain in effect so long as Grantee has the obligation to maintain such files, records, books, invoices, documents, payrolls and other data under this Article 6.

6.7 Submitting False Claims

Grantee shall at all times deal in good faith with the City, shall only submit a Funding Request to the City upon a good faith and honest determination that the funds sought are for Eligible Expenses under the Grant, and shall only use Grant Funds for payment of Eligible Expenses as set forth in Appendix A. Any Grantee who commits any of the following false acts shall be liable to the City for three times the amount of damages the City sustains because of the Grantee's act. A Grantee will be deemed to have submitted a false claim to the City if the Grantee: (a) knowingly presents or causes to be presented to an officer or employee of the City a false Funding Request; (b) knowingly disburses Grants Funds for expenses that are not Eligible Expenses; (c) knowingly makes, uses, or causes to be made or used a false record or statement to get a false Funding Request paid or approved by the City; (d) conspires to defraud the City by getting a false Funding Request allowed or paid by the City; or (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.

6.8 Grantee's Board of Directors.

Grantee shall at all times be governed by a legally constituted and fiscally responsible board of directors. Such board of directors shall meet regularly and maintain appropriate membership, as established in Grantee's bylaws and other governing documents and shall adhere to applicable provisions of federal, state and local laws governing nonprofit corporations. Grantee's board of directors shall exercise such oversight responsibility with regard to this Agreement as is necessary to ensure full and prompt performance by Grantee of its obligations under this Agreement.

ARTICLE 7 - TAXES

7.1 Grantee to Pay All Taxes.

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

7.2 Use of City Real Property.

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

(a) Grantee, on behalf of itself and any subgrantees, successors and assigns, recognizes and understands that this Agreement may create a possessory interest subject to property taxation and Grantee, and any subgrantee, successor or assign, may be subject to the payment of such taxes.

(b) Grantee, on behalf of itself and any subgrantees, successors and assigns, further recognizes and understands that any assignment permitted hereunder and any exercise of any option to renew or other extension of this Agreement may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Grantee shall

report any assignment or other transfer of any interest in this Agreement or any renewal or extension thereof to the County Assessor within sixty (60) days after such assignment, transfer, renewal or extension.

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

7.3 Withholding.

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

ARTICLE 8 - REPRESENTATIONS AND WARRANTIES

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

8.1 Organization; Authorization.

Grantee is a California Community College District and public entity under Education Code 70900.

8.2 Location. (Reserved)

8.3 No Misstatements.

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

8.4 Conflict of Interest.

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

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

8.5 No Other Agreements with City.

Except as expressly itemized in Appendix D, neither Grantee nor any of Grantee's affiliates, officers, directors or employees has any interest, however remote, in any other agreement with City including any commission, department or other subdivision thereof.

8.6 Subcontracts.

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

8.7 Eligibility to Receive Federal Funds.

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

ARTICLE 9 - INDEMNIFICATION AND GENERAL LIABILITY

9.1 Indemnification.

(a) City College shall indemnify and hold City, its officers, employees and agents, harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages, arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of City College, its officers, agents or employees.

(b) City shall indemnify and hold City College, its officers, employees and agents, harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages, arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of City, its officers, agents or employees.

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

9.4 LIMITATION ON LIABILITY OF CITY.

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

ARTICLE 10 - INSURANCE

10.1 Types and Amounts of Coverage.

Without limiting Grantee's liability pursuant to Article 9, Grantee shall maintain in force, during the full term of this Agreement, insurance in the following amounts and coverages:

(a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than one million dollars (\$1,000,000) each accident, injury, or illness;

(b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; policy must include Abuse and Molestation coverage;

(c) Commercial Automobile Liability Insurance with limits not less than one million dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(d) Professional liability insurance for negligent acts, errors or omission with respect to

professional or technical services, if any, required in the performance of this Agreement with limits not less than one million dollars (\$1,000,000) each claim.

10.2 Additional Requirements for General and Automobile Coverage.

Commercial General Liability and Commercial Automobile Liability insurance policies shall:

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

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

10.3 Additional Requirements for All Policies.

All policies shall be endorsed to provide at least thirty (30) days' advance written notice to City of cancellation of policy for any reason, nonrenewal or reduction in coverage and specific notice mailed to City's address for notices pursuant to Article 15.

10.4 Required Post-Expiration Coverage.

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

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

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

10.6 Evidence of Insurance.

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

10.7 Effect of Approval.

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

10.8 Insurance for Subcontractors and Evidence of this Insurance.

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

10.9 Worker's Compensation.

The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the

City for all work performed by the Grantee, its employees, agents and subcontractors.

ARTICLE 11 - EVENTS OF DEFAULT AND REMEDIES

11.1 Termination for Default.

The occurrence of any one or more of the following events shall constitute an “Event of Default” under this Agreement:

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

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

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

(d) **Failure to Perform Other Covenants.** Grantee fails to perform or breaches any other agreement or covenant of this Agreement to be performed or observed by Grantee as and when performance or observance is due and such failure or breach continues for a period of ten (10) days after the date on which such performance or observance is due.

(e) **Cross Default.** Grantee defaults under any other agreement between Grantee and City (after expiration of any grace period expressly stated in such agreement).

(f) **Voluntary Insolvency.** Grantee (i) is generally not paying its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Grantee or of any substantial part of Grantee's property or (v) takes action for the purpose of any of the foregoing.

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

(h) **Accreditation.** Grantee becomes unaccredited as a California Community College.

11.2 Remedies upon Event of Default.

Upon and during the continuance of an Event of Default, City may do any of the following, individually or in combination with any other remedy:

(a) **Termination.** City may terminate this Agreement by giving a written termination notice to Grantee of the Event of Default and that, on the date specified in the notice, this Agreement shall terminate and all rights of Grantee hereunder shall be extinguished. In the sole discretion of the City, Grantee may be allowed thirty (30) days to cure the default. In the event of termination for default, Grantee will be paid for Eligible Expenses in any Funding Request that was submitted and approved by City prior to the date of termination specified in such notice.

(b) Withholding of Grant Funds.

City may withhold all or any portion of Grant Funds not yet disbursed hereunder, regardless of whether Grantee has previously submitted a Funding Request or whether City has approved the disbursement of the Grant Funds requested in any Funding Request. Any Grant Funds withheld pursuant to this Section and subsequently disbursed to Grantee after cure of applicable Events of Default, if granted by the City in its sole discretion, shall be disbursed without interest.

(c) Offset. City may offset against all or any portion of undisbursed Grant Funds hereunder or against any payments due to Grantee under any other agreement between Grantee and City the amount of any outstanding Loss incurred by any Indemnified Party, including any Loss incurred as a result of the Event of Default.

(d) Return of Grant Funds. City may demand the immediate return of any previously disbursed Grant Funds that have been claimed or expended by Grantee in breach of the terms of this Agreement, together with interest thereon from the date of disbursement at the maximum rate permitted under applicable law.

11.3 Termination for Convenience.

City shall have the option, in its sole discretion, to terminate this Agreement at any time for convenience and without cause. The City shall provide at least one year advance notice of any termination for convenience. For example, if City anticipates terminating for the 2021-22 academic year, notice must be provided to City College no later than June 30, 2020. City shall exercise this option by using its best efforts to give Grantee one-year's advance written notice that specifies the effective date of termination. Upon receipt of the notice of termination, Grantee shall undertake with diligence all necessary actions to effect the termination of this Agreement on the date specified by City and minimize the liability of Grantee and City to third parties. Such actions shall include, without limitation:

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

(b) Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, services, equipment or other items; and

(c) Completing performance of any work that City designates to be completed prior to the date of termination specified by City.

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

11.4 Remedies Nonexclusive.

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

ARTICLE 12 - DISCLOSURE OF INFORMATION AND DOCUMENTS

12.1 Proprietary or Confidential Information of City.

Grantee understands and acknowledges that, in the performance of this Agreement or in contemplation thereof, Grantee may have access to private or confidential information that may be owned or controlled by City and that such information may contain proprietary or confidential information, the disclosure of

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

12.2 Sunshine Ordinance.

Grantee acknowledges that this Agreement and all records related to its formation, Grantee's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

12.3 Financial Projections.

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

ARTICLE 13 - ASSIGNMENTS AND SUBCONTRACTING

13.1 No Assignment by Grantee.

Grantee shall not, either directly or indirectly, assign, transfer, hypothecate, subcontract or delegate all or any portion of this Agreement or any rights, duties or obligations of Grantee hereunder without the prior written consent of City. This Agreement shall not, nor shall any interest herein, be assignable as to the interest of Grantee involuntarily or by operation of law without the prior written consent of City. A change of ownership or control of Grantee or a sale or transfer of substantially all of the assets of Grantee shall be deemed an assignment for purposes of this Agreement.

13.2 Agreement Made in Violation of this Article.

Any agreement made in violation of Section 13.1 shall confer no rights on any person or entity and shall automatically be null and void.

13.3 Subcontracting.

Any subcontractor must be approved in advance in writing by the City.

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

(b) Terms of Subcontract.

Each subcontract shall be in form and substance acceptable to City and shall expressly provide that it may be assigned to City without the prior consent of the subgrantee. In addition, each subcontract shall incorporate all of the terms of this Agreement, insofar as they apply to the subcontracted portion of the Grant Plan. Without limiting the scope of the foregoing, each subcontract shall provide City, with respect

to the subgrantee, the audit and inspection rights set forth in Section 6.6. Upon the request of City, Grantee shall promptly furnish to City true and correct copies of each subcontract permitted hereunder.

13.4 Grantee Retains Responsibility.

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

ARTICLE 14 - INDEPENDENT CONTRACTOR STATUS

14.1 Nature of Agreement.

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

14.2 Direction.

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

14.3 Consequences of Recharacterization.

(a) Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Grantee is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Grantee which can be applied against this liability). City shall subsequently forward such amounts to the relevant taxing authority.

(b) Should a relevant taxing authority determine a liability for past services performed by Grantee for City, upon notification of such fact by City, Grantee shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Grantee under this Agreement (again, offsetting any amounts already paid by Grantee which can be applied as a credit against such liability).

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

ARTICLE 15 - NOTICES AND OTHER COMMUNICATIONS

15.1 Requirements.

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

If to the Agency or City: Department of Children, Youth, and Their Families
1390 Market Street, Suite 900
San Francisco, CA 94102
Attn: Maria Su, Executive Director

If to City College: City College of San Francisco
50 Frida Kahlo Way, E200
San Francisco, CA 94112
Attn: Chancellor
Facsimile No. 415-239-3918

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

ARTICLE 16 – COMPLIANCE

16.1 Laws Incorporated by Reference

The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at http://www.amlegal.com/codes/client/san-francisco_ca/.

16.2 Nondiscrimination; Penalties.

(a) **Non Discrimination in Contracts.** Grantee shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Grantee shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Grantee is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

(b) **Nondiscrimination in the Provision of Employee Benefits.** Grantee does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

16.3 Reserved.

16.4 Tropical Hardwood and Virgin Redwood Ban.

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

16.5 Drug-Free Workplace Policy.

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

16.6 Resource Conservation; Liquidated Damages.

Chapter 5 of the San Francisco Environment Code (Resource Conservation) is incorporated herein by

reference. Failure by Grantee to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract. If Grantee fails to comply in good faith with any of the provisions of Chapter 5, Grantee shall be liable for liquidated damages in an amount equal to Grantee's net profit under this Agreement, or five percent (5%) of the total contract amount, whichever is greater. Grantee acknowledges and agrees that the liquidated damages assessed shall be payable to City upon demand and may be offset against any monies due to Grantee from any contract with City.

16.7 Compliance with ADA.

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

16.8. Requiring Minimum Compensation for Employees.

Unless otherwise exempt, Grantee shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Grantee is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of the Chapter 12P is available on the web at <http://sfgov.org/olse/mco>. Grantee is required to comply with all of the applicable provisions of 12P, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Grantee certifies that it complies with Chapter 12P.

16.9 Limitations on Contributions.

By executing this Agreement, Grantee acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Grantee's board of directors; Grantee's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Grantee; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Grantee. Grantee certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the grant, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

16.10 First Source Hiring Program.

Grantee must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Grantee is subject to the enforcement and penalty provisions in Chapter 83.

16.11 Prohibition on Political Activity with City Funds.

In accordance with San Francisco Administrative Code Chapter 12.G, no funds appropriated by the City and County of San Francisco for this Agreement may be expended for organizing, creating, funding,

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

16.12 Preservative-treated Wood Containing Arsenic. (Reserved)

16.13 Working with Minors.

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

16.14 Protection of Private Information.

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

16.15 Public Access to Meetings and Records.

If Grantee receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Grantee shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, Grantee agrees to open its meetings and records to the public in the manner set forth in Sections 12L.4 and 12L.5 of the Administrative Code. Grantee further agrees to make good-faith

efforts to promote community membership on its Board of Directors in the manner set forth in Section 12L.6 of the Administrative Code. Grantee acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. 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.

16.16 Consideration of Criminal History in Hiring and Employment Decisions.

Grantee agrees to comply fully with and be bound by all of the provisions of Chapter 12T, “City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions,” of the San Francisco Administrative Code (“Chapter 12T”), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. Grantee is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

16.17 Food Service Waste Reduction Requirements.

Grantee shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

16.18 Reserved. Slavery Era Disclosure.

16.19 Distribution of Beverages and Water.

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

(b) **Packaged Water Prohibition.** Grantee agrees that it shall not sell, provide, or otherwise distribute Packaged Water, as defined by San Francisco Environment Code Chapter 24, as part of its performance of this Agreement. .

16.20 Duty to Collect and Record Client Sexual Orientation and Gender Identity Data.

Grantee shall comply with San Francisco Administrative Code Chapter 104 by seeking to collect and record information about clients’ sexual orientation and gender identity, and reporting such data to the Department. In seeking to collect information about clients’ sexual orientation and gender identity, Grantee shall: (1) communicate to clients that the provision of sexual orientation and gender identity information is voluntary, and no direct services shall be denied to clients who decline to provide that information; (2) solicit gender identity and sexual orientation data using questions and approaches consistent with the Department of Public Health’s Policies and Procedures entitled “Sexual Orientation Guidelines: Principles for Collecting, Coding, and Reporting Identity Data,” reissued on September 2, 2014, and “Sex and Gender Guidelines: Principles for Collecting, Coding, and Reporting Identity Data,” reissued on September 2, 2014, or any successor Policies and Procedures; and (3) advise clients that they will protect personally identifiable information regarding clients’ sexual orientation and gender identity from unauthorized disclosure, to the extent permitted by law. The duty to collect information about gender identity and sexual orientation shall not apply to the extent such collection is incompatible with any professionally reasonable clinical judgment that is based on articulable facts of clinical significance. Further, Grantee shall protect personally identifiable information from unauthorized disclosure, to the extent permitted by law and as required by the Health Insurance Portability and Accountability Act, the California Medical Information Act, Article 1 of the California Constitution, the California Health and Safety Code and regulations

promulgated thereunder, the California Welfare and Institutions Code and regulations promulgated thereunder, and any other applicable provision of federal or state law.

16.21 Compliance with Other Laws.

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

ARTICLE 17 - MISCELLANEOUS

17.1 No Waiver.

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

17.2 Modification.

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

17.3 Administrative Remedy for Agreement Interpretation. Reserved

17.4 Governing Law; Venue.

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

17.5 Headings.

All article and section headings and captions contained in this Agreement are for reference only and shall not be considered in construing this Agreement.

17.6 Entire Agreement.

This Agreement and the Application Documents set forth the entire Agreement between the parties, and supersede all other oral or written provisions. If there is any conflict between the terms of this Agreement and the Application Documents, the terms of this Agreement shall govern

17.7 Certified Resolution of Signatory Authority.

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

17.8 Severability.

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed

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

17.9 Successors; No Third-Party Beneficiaries.

Subject to the terms of Article 13, the terms of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Nothing in this Agreement, whether express or implied, shall be construed to give any person or entity (other than the parties hereto and their respective successors and assigns and, in the case of Article 9, the Indemnified Parties) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

17.10 Survival of Terms.

The obligations of Grantee and the terms of the following provisions of this Agreement shall survive and continue following expiration or termination of this Agreement:

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

17.11 Further Assurances.

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

17.12 Dispute Resolution Procedure.

The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Grantee may submit to the Contracting Officer a written request for administrative review and documentation of the Grantee's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Grantee of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Grantee shall proceed diligently with the

performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

17.13 Cooperative Drafting.

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

17.14 MacBride Principles--Northern Ireland.

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

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

**CITY
DEPARTMENT OF CHILDREN, YOUTH,
AND THEIR FAMILIES**

**CITY COLLEGE
SAN FRANCISCO COMMUNITY
COLLEGE DISTRICT**

By: _____
Maria Su
Executive Director

By: _____
Alex Randolph
President, Board of Trustees

Federal Tax ID #: _____

City Vendor Number: _____

Approved as to Form:

Dennis J. Herrera
City Attorney

Approved as to Form:

San Francisco Community College District,
Office of the General Counsel

By: _____
Louise S. Simpson
Deputy City Attorney

By: _____
Steve Bruckman
General Counsel

Appendix A – Grant Plan

Appendix B – Disbursement Procedures

Appendix C – Insurance Waiver (Reserved)

Appendix D – Interests In Other City Contracts

Appendix A—Grant Plan

1. PERSONNEL AND COMMUNICATIONS

All communications regarding this Memorandum of Understanding and the Free City College Program shall be addressed to the Chancellor or designated staff of City College of San Francisco.

2. FUNDING

- a. **Base Funding.** The Free City Program shall receive base funding from the City as follows:
Year 1 (Fall 2019 and Spring 2020) – Fifteen Million Dollars (\$15 Million);
Academic Year 2 – Fifteen Million Seven Hundred Thousand Dollars (\$15.7 Million);
Academic Year 3 – Sixteen Million Four Hundred Thousand Dollars (\$16.4 Million);
Academic Year 4-10 – (Sixteen Million Four Hundred Thousand Dollars) \$16.4 Million plus the CPI factor as determined by the City’s Controller.

- b. **Prior Years Shortfall Reimbursement to City College.** In addition to base funding, the City shall pay City College the amount of Five Million Four Hundred Thousand Dollars (\$5.4 Million) to reimburse the college for previous Free City College Program costs, within 60 days after this Agreement is signed. The funds shall be held by City College for use consistent with this Grant.

- c. **Free City College Reserve Fund.** Within the Free City Fund, the Controller shall maintain a segregated reserve fund (the Free City College Reserve). The Free City College Reserve Fund may be used in the event that the cost of the Free City Program exceeds the annual base funding as verified by the annual audit or if the City fails to make payments as provided in this Agreement. The Free City Reserve Fund may also be used to continue the Free City Program after August 22, 2029 if the City does not continue to fund the Free City College Program.

- i. The current balance of the Free City College Reserve fund is Two Million Dollars (\$2 million) from prior year budget appropriations by the City.
- ii. For years 1-4 of the Agreement, all unspent funds, per the annual audit, shall be deposited in the Free City College Reserve Fund. For years 5-10 of the Agreement, per the annual audit, one half of unspent funds shall be returned to the City and one half of unspent funds shall be deposited to the Free City College Reserve Fund. The parties agree that the reserve fund will not grow above 50% of the baseline funding for the following year.

- d. **Use of Funds.** City College shall use the Funds only for Eligible Expenses which include enrollment fees and other education-related financial supports for Eligible Students as set forth in this Agreement and for no other purpose.

- i. **Program Design.** City College shall design a program that is cost neutral to City College. The City shall not be responsible for costs that exceed the City’s annual allocation for the program.

- ii. **Expenses subject to this Agreement and paid for by the Free City College Program:**

1. **California College Promise Grant Eligible Students.** California College Promise Grant Eligible Students who attend City College shall receive grants equal in value to \$46 for each enrolled credit unit. Grants may be

used for books, college fees other than enrollment fees, supplies, and transportation costs related to their enrollment at City College.

2. **Other Eligible Students.** Other Eligible Students who do not receive California College Promise Grants will receive free enrollment, with enrollment fees paid for through the Free City College program.

iii. Students Who Withdraw from Courses

1. **Pre-Deadline Withdrawal.** If a student withdraws from a course before the date to receive a full refund, the student owes nothing to City College. (Refund deadlines appear next to each course listing on the college website at www.ccsf.edu/Schedule.)
2. **Post-Deadline Withdrawal.** If a student withdraws from a course or courses after the deadline to receive a full refund, then the student must pay City College for all applicable enrollment fees or the value of the fees paid by grant for the course or courses, and/or grants paid for other educational expenses. The money shall be returned to the Free City College Program.

3. ADJUSTMENTS AND CHANGES IN THE MOU

The parties agree to an annual review to consider expansion and adjustments to the Free City College Program MOU. Any expansion and/or adjustment to the program would be by mutual agreement of the City and City College. In the event of an agreed upon expansion and/or adjustment, the first source of funds would be the Free City reserve fund.

4. PROCEDURES

- a. **Policy and Procedures.** City College shall provide their policies and procedures for the Free City College Program to the independent auditor and DCYF, including but not limited to verification of eligibility, disbursement of Grants, and reimbursements owed to City College for student drops and withdrawals.
- b. **Eligibility.** City College shall require students to complete a questionnaire at the time of registration to determine eligibility for the Free City College Program.
- c. **Financial Aid.** All funded students will be encouraged but not required to complete a FAFSA and apply for financial aid. City College will document counseling, outreach, and support services to achieve the goal of increasing the number of students applying for financial aid and completing the FAFSA. While a completed FAFSA is not required to apply and receive Free City tuition fee funding, City College will continue financial aid outreach to increase the number of Free City students applying for financial aid.
- d. **Reduction of Funding.** The City shall use its best efforts to provide at least one year advance notice of any potential reduction or termination of funding pursuant to this Agreement. For example, if City anticipates reducing funding for the 2021-22 academic year, notice should be provided to City College no later than June 30, 2020.
- e. **Changes in State or Federal Policy:** If policy changes at the state or federal level impact enrollment fees (such as increases or decreases to enrollment fees by the Board of Governors) or financial aid, City College shall provide to the Oversight Committee an analysis of the impact of such policies on the Free City College Program with recommendations for changes to the program design, if needed, to ensure compliance with new policies and to maximize other state and/or federal funding. Changes to the program design shall be facilitated through the process articulated in Section 3 of this Appendix A.

5. PROGRAM OVERSIGHT

a. Oversight Committee

i. Free City College Oversight Committee: The Board of Supervisors hereby establishes the Free City College Oversight Committee (“Oversight Committee”).

ii. Membership:

The Oversight Committee shall consist of 15 voting members

- (a) Seat 1 shall be held by the Mayor or the Mayor’s designee.
- (b) Seat 2 shall be held by the president of the City College Board of Trustees or the president’s designee.
- (c) Seat 3 shall be held by a student at City College, appointed by the Mayor.
- (d) Seat 4 shall be held by a student at City College, appointed by the Board of Supervisors.
- (e) Seat 5 shall be held by a student at City College, appointed by the City College Associated Students.
- (f) Seat 6 shall be held by a member of the Board of Supervisors, appointed by the Board of Supervisors or that member’s designee.
- (g) Seat 7 shall be held by an employee or officer of the San Francisco Unified School District, appointed by the Board of Education of the San Francisco Unified School District.
- (h) Seat 8 shall be held by the Controller or the Controller’s designee.
- (i) Seat 9 shall be held by an employee of the Department of Children, Youth and Their Families, appointed by the director of the Department.
- (j) Seat 10 shall be held by a City College employee who is involved in the administration of the Free City College program, appointed by the City College Board of Trustees.
- (k) Seat 11 shall be held by a City College faculty member, appointed by the City College Academic Senate.
- (l) Seat 12 shall be held by a classified staff member of City College, appointed by labor organization that represents the largest number of classified City College employees.
- (m) Seat 13 shall be held by a member of the public, appointed by the Mayor.
- (n) Seat 14 shall be held by a member of the public, appointed by the Board of Supervisors.
- (o) Seat 15 shall be held by the student trustee member of the City College Board of Trustees.

For members representing City College, if an appointing authority associated with City College declines to appoint a member for which it has appointing authority and leaves that seat vacant for

more than thirty (30) days, the President of the Board of Trustees of City College may make an appointment until the appointing authority appoints a person to the seat.

If, at any point, the City College Board of Trustees, City College Associated Students, City College Academic Senate, the labor organization that represents the largest number of classified City College employees-or the Board of Education of the San Francisco Unified School District declines to appoint a member to a seat for which it has appointing authority and leaves that seat vacant for more than 90 days, the Board of Supervisors may appoint a member of the public to fill the seat until the appointing authority appoints a person to the seat.

iii. ORGANIZATION AND TERMS OF OFFICE.

- (a) Each member of the Oversight Committee shall serve at the pleasure of the member's appointing authority, and shall serve for the life of the Oversight Committee unless removed by the appointing authority.
- (b) Members of the Oversight Committee shall receive no compensation from the City, except that City employees serving in seats 1, 6, 8, and 9 may receive their regular salaries for time spent on the Oversight Committee because they are serving in an official capacity.
- (c) Any member who misses three regular meetings of the Oversight Committee in a nine-month period without the express approval of the Oversight Committee at or before each missed meeting shall be deemed by operation of law to have resigned from the Oversight Committee ten days after the third unapproved absence. The Oversight Committee shall inform the Clerk of the Board of Supervisors, the Clerk of the Board of Trustees, and the member's appointing authority of the resignation. This subsection (c) shall not apply to Seats 1, 2, 6, 8, and 15.
- (d) The Department of Children, Youth and Their Families shall provide clerical and administrative support and staffing for the Oversight Committee.

iv. DUTIES AND RESPONSIBILITIES.

- (a) The Oversight Committee shall provide advice to the Board of Supervisors, the Mayor, the Department of Children, Youth and Their Families, all other relevant City departments, and City College regarding implementation of the Memorandum of Understanding between the City and City College authorized by resolution in Board File No. 190735 as it may be amended by the City and City College from time to time (the "Free City College MOU"). The Oversight Committee's advice may include recommendations regarding the uses of funds disbursed under the Free City College MOU, proposed changes in uses of the funds, and potential expansions of the Free City College program. In providing its advice and recommendations, the Oversight Committee shall consider the audit reports provided by the Controller under Section 10.100-288 of this Code, as well as reports that the Chancellor of City College or the Chancellor's designee has provided to the Oversight Committee under the Free City College MOU.
- (b) All City departments, commissions, boards, and agencies shall cooperate with the Oversight Committee in conducting its business.

v. MEETINGS AND PROCEDURES.

- (a) The Oversight Committee shall hold a regular meeting not less than once every three months.
- (b) Seven voting members of the Oversight Committee shall constitute a quorum for the purpose of meeting, and the affirmative votes of at least seven members of the Oversight Committee are necessary to constitute approval of any non-parliamentary matter by the Oversight Committee.
- (c) The members in seats 1 and 2 shall be the co-chairs of the Oversight Committee. The Oversight Committee may establish rules for its own organization and procedures.

Notwithstanding Rule 2.21 of the Board of Supervisors Rules of Order, which provides that advisory bodies created by the Board should sunset within three years, this Article II shall expire by operation of law, and the Oversight Committee shall terminate, on June 30, 2029. After the expiration of the Oversight Committee, the City Attorney shall cause this Article to be removed from the Administrative Code.

b. Annual Reports to the Oversight Committee

- i. **Annual Financial Audit.** The Controller shall select an independent auditor to audit City College's use of monies disbursed from the Fund and shall prepare an audit report each fiscal year. The financial audit report shall be presented to the Oversight Committee along with a response by the Chancellor of City College, or designee, to the financial audit. The financial audit report shall be paid for through the Fund. City College and the DCYF shall provide any necessary guidance to the independent auditor on the development of the annual audit report.
- ii. **Annual Progress Report On Student Success Outcomes And Student Equity Outcomes.** City College shall provide its student equity plan and progress towards meeting State accountability measures to improve student equity outcomes through annual progress reports for Free City College Program Participants:
 - (1) student equity outcomes for historically underserved student populations, such as completion and graduation rates; and
 - (2) FAFSA, California Dream Act completion and Pell Grant awards.
 - (3) Outcomes shall be disaggregated by race/ethnicity and Federal Pell/CCPG status.
- iii. **Ongoing Program Reporting.** City College shall report data to DCYF to be used for the purpose of program monitoring. Specifications and formats for this data shall be mutually agreed to by both parties in advance within sixty (60) days of the date of this Agreement.

Appendix B—Disbursement Procedures

1. ELIGIBLE EXPENSES SHALL INCLUDE:

CCSF may use excess funds remaining in the annual allocation after fully funding enrollment fees and grants to cover administrative costs associated with the Free City College Program with the DCYF's approval. Functions or staff positions may include but are not limited to: program manager, financial aid counselors, AB 540 Dream coordinator/counselor, piloting evidence-based interventions to improve student equity outcomes, data analyst, IT system upgrades, increased staff hours for financial aid counselors or data analysts, incorporation of evidence-based methods to improve state and federal applications uptake.

2. ELIGIBLE EXPENSES SHALL SPECIFICALLY EXCLUDE:

- a. personal or business-related costs or expenses related to meals, catering, transportation, lodging, fundraising or educational activities;
- b. capital expenses;
- c. any costs or expenses which are prohibited under the terms and conditions of any federal or state grant supplying all or any portion of the Grant Funds;
- d. penalties, late charges or interest on any late payments; or
- e. taxes or other amounts withheld from wages or salaries which have not actually been paid by Grantee during the term of this Agreement or which relate to periods before or after the term of this Agreement.

3. GRANT FUNDS SHALL BE DISBURSED TO GRANTEE AS FOLLOWS:

Delivery of Base Funds. For the 2019-20 fiscal year, the City shall use its best efforts to deliver funds no later than 60 days after the Agreement is signed. For the additional years, the annual funding of the Free City College Program will be an annual budgeted transfer paid to City College within 60 days after certification of the budget for the coming academic year.

Appendix D--Interests In Other City Contracts

City Department or Commission	Date of Contract	Amount of Contract