

CITY AND COUNTY OF SAN FRANCISCO
<<INSERT NAME OF DEPARTMENT OR COMMISSION>>

DONATION AGREEMENT

between

CITY AND COUNTY OF SAN FRANCISCO and **<<INSERT NAME OF DONEE IN ALL CAPS>>**

THIS DONATION AGREEMENT (“Agreement”) is made as of **<<INSERT DATE OR LEAVE A SPACE FOR DATE TO BE INKED IN>>**, in the City and County of San Francisco, State of California, by and between **<<INSERT NAME OF DONEE IN ALL CAPS >>** (“Donee”) and the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (“City”) acting by and through **<<INSERT NAME OF DEPARTMENT OR COMMISSION >>** (“Department”),

RECITALS

WHEREAS, Donee has applied to the Department for a **<<INSERT NAME OF MATERIALS>> Donation**; and

WHEREAS, City conducted a process to determine that Donee is both eligible to receive the materials based on applicable laws and grant funding requirements; and

WHEREAS, City desires to provide this donation based on the terms and conditions set forth herein; and

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 acknowledged, the parties agree as follows:

- 1. Approval of Purchaser Required.** Donations of goods, commodities, equipment, materials, or similar tangible items (collectively “Donated Materials”) must be approved by the City’s Purchaser pursuant to Administrative Code 21.03(i)(2).
- 2. “As-is” Condition of Donated Materials.** The City is providing all Donated Materials in an as-is condition. Donee acknowledges that the City makes no representations, warranties, express or implied, or guarantees about the Donated Materials, including, but not limited to, condition, merchantability, fitness for any particular purpose, or any implied warranty arising from course of performance, course of dealing or usage of trade. The City will not provide any instructions, follow up services, replacement parts or repairs related to the Donated Materials.
- 3. Duration of Term.** This is a one-time transaction. The term of this Agreement shall commence on the date of the receipt of materials below and expire six months later.

Date of Receipt of Materials: _____

4. Implementation of Donation Plan. Donee shall diligently and in good faith use the Donated Materials to benefit the public as detailed in this section (“Donation Plan”). The Donation Plan is as follows:

ADJUST AND EXPAND TO FIT THE TRANSACTION, BUT THE FOLLOWING IS REQUIRED AT MINIMUM.

DONEE will receive [quantity and unit of measurement] of [describe donated materials in detail]. Donee intends to use the materials to [describe purpose]. Donee shall not resell the items donated under this agreement. In use or non-use of the Donated Materials, Donee will take all measures to make clear that the City has no ownership of the items or relationship thereto.

PRIOR TO AGREEING TO DONATE, CONFIRM THERE ARE NO FUNDING SOURCE RESTRICTIONS OF THE ORIGINAL PURCHASE OF THE DONATED MATERIALS (SUCH AS GRANT FUNDS) AND THAT THE DONEE IS ELIGIBLE UNDER BOTH APPLICABLE LAW AND ANY GRANT CONDITIONS.

5. Eligibility and Donee Selection. The Donated Materials are surplus to the City’s needs. The City selected Donee to receive the Donated Materials in accordance with Administrative Code 21.03(i)(2). Donee is eligible to receive the Donated Materials because they are a [public entity/ non-profit organizations /private organization with a public purpose / low income individual or family]. Donee was chosen when [describe the selection process].

6. Donee to Pay All Taxes. Donee 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.

7. Release of Claims. Donee waives and releases all claims against the City, its officers and employees with respect to any and all injury, disability, death, loss or damage to property resulting from possession, use or misuse of the Donated Materials, regardless of the cause, except for injuries of damages arising from gross negligence, intentional wrongdoing or reckless disregard for or indifference to the rights of others. Donee agrees not to sue the City on the basis of these waived and released claims, including without limitation any claims for indemnification of third party claims against Donee arising from use of the Donated Materials. Donee waives and releases all other known and unknown claims at the time this document is executed. Donee understands that this release extends to claims that it does not know or does not expect to exist at the time of the signing of this release, and it hereby waives the protections of California Civil Code Section 1542

8. Indemnification. Donee shall hold City harmless from and against any claims arising from its donation and/or use or non-use of donated materials.

9. Assumption of Risk. Donee acknowledges there is are certain risks of injury that may arise from the use or misuse of the Donated Materials, including the risk of injury, disability or death. Donee assumes full responsibility for all risks arising directly or indirectly from the possession, use or misuse of the Donated Materials, both known and unknown, regardless of the cause.

10. Limitation on City Obligations. The City has no other obligations to Donee with respect to this agreement, including but not limited to an absolute prohibition on compensation from the City associated with this agreement. City is not authorized to expend funds in the performance of its obligations under this agreement.

11. LIMITATION ON LIABILITY OF CITY. City is donating the materials as-is, and disclaims all liability from the moment of transfer. Parties agree that the City will not be liable for any damages associated with the use or non-use of the Donated Materials.

12. 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.

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

GRANTEE:

<<INSERT CITY DEPARTMENT OR COMMISSION IN ALL CAPS>>

<<INSERT NAME OF GRANTEE IN ALL CAPS>>

By: _____
<<INSERT NAME OF SIGNATOR>>
<<INSERT TITLE>>

By: _____

Print Name: _____

Approved as to Form:

Title: _____

Dennis J. Herrera
City Attorney

Federal Tax ID #: _____

Approved:

By: _____
[name of Deputy City Attorney]
Deputy City Attorney

Sailaja Kurella
Acting Director of the Office of Contract
Administration, and Purchaser

By: _____
[name of Purchaser or
“Name: _____”]