2013-2014 SUBRECIPIENT AGREEMENT

CITY OF COSTA MESA, AS GRANTEE, UNDER THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

Date Approved: **June 11, 2013**

Amount of Grant: **$5,000.00**

Subrecipient: **Council on Aging – Orange County**

This **SUBRECIPIENT AGREEMENT** (Agreement) is entered into as of **July 1, 2013** by and between the **CITY OF COSTA MESA**, a California municipal corporation and a Grantee under the Community Development Block Grant Program (CITY), and **Council on Aging – Orange County**, a nonprofit corporation (SUBRECIPIENT).

WHEREAS, the CITY, as an entitlement recipient and grantee of the U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) Program, desires to enter this Agreement with the SUBRECIPIENT for the expenditure of CDBG funds in accordance with Title 24, Part 570 of Code of Federal Regulations 24 CFR 570.000, *et seq.* (CDBG REGS); and

WHEREAS, the CITY has applied for and received CDBG funds from the United States Government under Title I of the Housing and Community Development Act of 1974, Public Law 93-383; and

WHEREAS, the SUBRECIPIENT is a private nonprofit agency that has been selected by the CITY to receive CDBG FUNDS and administer such financial assistance; and

WHEREAS, the City wishes to engage the SUBRECIPIENT to assist the CITY in utilizing such funds in accordance with applicable CDBG REGS; and

WHEREAS, the CITY and SUBRECIPIENT have duly executed this SUBRECIPIENT Agreement for the expenditure of such funds; and

WHEREAS, the CDBG REGS mandate that a SUBRECIPIENT Agreement be executed.

IT IS HEREBY RESOLVED that the foregoing Recitals are a substantive part of this Subrecipient Agreement and the following provisions are approved and together shall constitute the Agreement between the CITY and SUBRECIPIENT in its entirety:

A. SUBRECIPIENT OBLIGATIONS.

1. **Provision of Services**. The subgranting of CDBG funds to SUBRECIPIENT shall be used to provide the specific services as described in Attachment 1, attached hereto and fully incorporated to this Agreement by this reference. Such services are summarized as follows: **regularly visit all nursing homes and residential care facilities in Costa Mesa and problem solve by listening to**

complaints/concerns, verifying, investigating and, when possible, resolving problems to the resident's satisfaction. As needed, the referrals to appropriate licensing agency will be made.

CDBG regulations require that a minimum of 51% of clients served by the SUBRECIPIENT'S program must be defined by HUD guidelines as persons of low and moderate-income. However, CITY requires that at least 70% of SUBRECIPIENT's clients served by the CDBG funded program be in the low and moderate income categories as established by HUD.

2. Non-Profit Status. The SUBRECIPIENT is a private, not-for-profit corporation, duly organized under the laws of the State of California, and whose officers are recorded in the Articles of Incorporation on file with the State of California, Secretary of State, Department of Corporations

3. Term of Agreement. Subject to Section 19 hereof, the term of this Agreement is from **July 1, 2013** through **June 30, 2014** provided, however, SUBRECIPIENT shall be obligated to perform such duties as would normally extend beyond this term, including but not limited to obligations with respect to indemnification, audits, reporting, data retention/reporting, and accounting.

4. Amount of Grant and Quarterly Disbursement. The amount granted to SUBRECIPIENT is **$5,000.00** (CDBG FUNDS) and such funds shall be expended by SUBRECIPIENT within a time period not exceeding twelve (12) consecutive months following the date of this Agreement. The CDBG FUNDS shall be disbursed by CITY to SUBRECIPIENT on a quarterly basis subject to and upon receipt and approval of a complete SUBRECIPIENT's quarterly activity report.

(a) Quarterly Reports. SUBRECIPIENT shall cause to be prepared and submitted to CITY on or before each October 15, January 15, April 15, and July 15 of each year of this Agreement a quarterly activity report in conformity with applicable CDBG REGS.

(b) Invoice Submittal. Concurrently with the submittal of each quarterly report, as described in subsection 4(a) above, SUBRECIPIENT shall submit both (i) an original invoice and (ii) true copies of other receipts, agreements, or other documentation supporting and evidencing how the CDBG FUNDS have been or will be expended during the applicable quarter.

(c) For example and by way of illustration, if SUBRECIPIENT intends to expend the applicable quarterly disbursement on staff salary, then copies of the time card(s) or other satisfactory evidence of employment of the subject staff member with the SUBRECIPIENT shall be submitted as a part of the quarterly report.

5. The Common Rule. SUBRECIPIENT agrees to conduct all activities of the organization, whether funded in whole or in part by CDBG FUNDS from CITY, in accordance with the provisions contained in the 24 CFR 85 (The Common Rule).

6. Conflicts. SUBRECIPIENT agrees that no officer, employee, agent or assignee of CITY having direct or indirect control of any CDBG monies granted to the CITY, inclusive of the subject CDBG FUNDS, shall serve as an officer of SUBRECIPIENT. Further, any conflict or potential conflict of interest of any officer of SUBRECIPIENT shall be fully disclosed in writing prior to the execution of this Agreement and said writing shall be attached and deemed fully incorporated as a part hereof.

7. Prohibition of SUBRECIPIENT Income from CDBG FUNDS. SUBRECIPIENT agrees that it shall not use CDBG FUNDS in any manner which shall provide income to SUBRECIPIENT. Any earned interest income on funds generated through the use of investment of funds received from

CDBG shall be cause, at the discretion of the CITY, for recapture of such income and/or the full amount of funds originally granted to SUBRECIPIENT.

The SUBRECIPIENT shall report quarterly all program income (as defined at 24 CFR 570.500(a)) generated by activities carried out with CDBG funds made available under this contract. The use of program income by the SUBRECIPIENT shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, the SUBRECIPIENT may use such income during the contract period for activities permitted under this contract and shall reduce requests for additional funds by the amount of any such program income balances on hand. All unexpended program income shall be returned to the CITY at the end of the contract period as required by 24 CFR 570.503(b)(8). Any interest earned on cash advances from the US Treasury and from funds held in a revolving fund account is not program income and shall be remitted promptly to the CITY.

8. Records and Reports. The SUBRECIPIENT shall maintain complete and adequate records and reports to assist CITY in meeting and maintaining its record keeping responsibilities under the CDBG REGS, including the following:

(a) Records: Documentation evidencing program income requirements in conformity with 24 CFR 570.504(b)(2)(i), (ii) and 24 CFR 570.503(b)(3) and 24 CFR 570.208(a)(2)(B) of the income level of persons and/or families participating in or benefiting by the SUBRECIPIENT program.

(i) Documentation of the number of persons and/or families participating in or benefiting by the SUBRECIPIENT program.

Household information shall include number of persons, identification of head of household, race/ethnicity, age of children, seniors, income verification.

Documentation of all CDBG FUNDS received from CITY.

Documentation of expenses as identified in the Budget Proposal, including evidence of incurring the expense, invoice(s) for goods or services, all other invoices for which CDBG FUNDS were expended, and payment therefore.

(ii) Any such other related records as CITY shall reasonably require or as required to be maintained pursuant to the CDBG REGS.

(b) Reports:

Payment Request.

Quarterly Activity Report, including outcome measurements.

Annual Consolidated Plan Performance Report.

Any such other reports as CITY (or HUD) shall reasonably require and/or request.

9. Audit Report Requirements. SUBRECIPIENT shall comply and/or cause compliance with all audit reports required by the CITY and in conformity with OMB Circular 133, effective June 27, 2003, to the extent the CDBG FUNDS granted to SUBRECIPIENT by the CITY under this Agreement exceed $500,000.00 in federal funds.

10. Uniform Administration Requirements. The SUBRECIPIENT shall comply with applicable uniform administrative requirements as described in 24 CFR 570.502.

11. Separation of Accounts. All CDBG FUNDS received by SUBRECIPIENT from CITY pursuant to this Agreement shall be maintained in an account in a federally insured banking or savings and loan institution with record keeping of such accounts maintained pursuant to applicable OMB Circular A-110 requirements. The SUBRECIPIENT is not required to maintain separate depository accounts for CDBG FUNDS; provided however, the SUBRECIPIENT must be able to account for receipt, obligation and expenditure of CDBG FUNDS pursuant to applicable OMB Circular A-110 requirements.

12. Retention of Records. All accounting records, reports, and evidence pertaining to all costs, expenses and the CDBG FUNDS of SUBRECIPIENT and all documents related to this Agreement shall be maintained and kept available at SUBRECIPIENT's office or place of business for the duration of the Agreement and thereafter for five (5) years after completion of an audit in conformity with the CDBG REGS. Records which relate to (a) complaints, claims, administrative proceedings or litigation arising out of the performance of this Agreement, or (b) costs and expenses of this Agreement to which CITY or any other governmental agency takes exception, shall be retained beyond the five (5) years until complete resolution or disposition of such appeals, litigation claims, or exceptions.

13. Compliance with Applicable Laws. SUBRECIPIENT agrees to comply fully with all applicable federal, state, and local laws, ordinances, regulations, and permits, including but not limited to all CDBG REGS relating to financial and contractual procedures, and OMB Circular Nos. A-87, A-122, and A-110 as set forth in 24 CFR 570.502(b). Said Federal documents are on file in the City of Costa Mesa, P.O. Box 1200, Costa Mesa, California 92628-1200, and are incorporated herein by reference.

(a) The SUBRECIPIENT shall maintain all presently required permits and shall secure any new permits required by authorities herein with jurisdiction over the work, project, or services provided by SUBRECIPIENT with the CDBG FUNDS.

(b) The SUBRECIPIENT shall ensure that the requirements of the California Environmental Quality Act are met for any permits, discretionary approvals, or other entitlement required to carry out the terms of this Agreement.

14. Affirmative Action Policy

(a) Provision of Program Services. In the performance of this Agreement or its activities, SUBRECIPIENT shall not engage in, nor permit its agents to engage in discrimination in employment of persons or provision of services or assistance, nor exclude any person from participation in, nor deny any person the benefits of, nor subject any person to discrimination under any program or activity funded in whole or in part with CDBG FUNDS on the grounds of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, gender or sexual orientation, except as permitted by Government Code Section 12940. Violation of this provision may result in the imposition of penalties referred to in Labor Code Section 1735 or other federal, state, or local penalties as well as other remedies available to the CITY under the provisions of this Agreement.

(b) ADA Compliance. SUBRECIPIENT shall comply with Title II of the Americans With Disabilities Act, (42 USC §12101, et. seq.) as it relates to public accommodations.

15. Non-Discrimination.

(a) No Discrimination in any Program or Activity. SUBRECIPIENT shall not under any program or activity funded in whole or in part with CDBG FUNDS, on the grounds of race, color, national origin, or sex:

Deny any facilities, services, financial aid or other benefits provided under the program or activity.

Provide any facilities, services, financial aid or other benefits which are different or are provided in a different form from that provided to others under the program or activity.

Subject to segregated or separate treatment in any facility in, or in any matter or process related to receipt of any service or benefit under the program or activity.

Restrict in any way access to, or in the enjoyment of any advantage or privilege enjoyed by others in connection with facilities, services, financial aid or other benefits under the program or activity.

Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirement or condition which the individual must meet in order to be provided any facilities, services or other benefit provided under the program or activity.

Deny an opportunity to participate in a program or activity as an employee.

(b) Non-Discrimination in Administration of Services. SUBRECIPIENT may not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination on the basis of race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color, national origin, or sex.

(c) Non-Discrimination in Site Selection. SUBRECIPIENT, in determining the site or location of housing or facilities provided in whole or in part with CDBG FUNDS, may not make selections of such site or location which have the effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination on the grounds of race, color, national origin, or sex, or which have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Civil Rights Act of 1964 and amendments thereto.

(d) Overcoming Effects of Prior Discrimination. In administering a program or activity funded in whole or in part with CDBG FUNDS regarding which the SUBRECIPIENT has previously discriminated against persons on the grounds of race, color, national origin or sex, the SUBRECIPIENT must take affirmative action to overcome the effects of prior discrimination, as and pursuant to applicable requirements of the CDBG Regs. and other applicable federal laws and regulations.

Even in the absence of such prior discrimination a SUBRECIPIENT in administering a program or activity funded in whole or in part with CDBG FUNDS should take affirmative action to overcome the effects of conditions which would otherwise result in limiting participation by persons of a particular race, color, national origin or sex. Where previous discriminatory practice or usage tends, on the grounds of race, color, national origin, or sex, to exclude individuals from participation

in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which CDBG funding applies, the SUBRECIPIENT has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purpose of the Civil Rights Act of 1964.

A SUBRECIPIENT shall not be prohibited by this part from taking any eligible action to ameliorate an imbalance in services or facilities provided to any geographic area or specific group of persons within its jurisdiction where the purpose of such action is to overcome prior discriminatory practice or usage.

(e) **Exceptions**. Notwithstanding the foregoing non-discrimination provisions, nothing contained therein shall be construed to prohibit any SUBRECIPIENT from maintaining or constructing separate living facilities or rest room facilities for the different sexes. Furthermore, selectivity on the basis of sex is not prohibited when institutional or custodial services can properly be performed only by a member of the same sex as the recipients of the services.

(f) **Non-Discrimination in Employment**. SUBRECIPIENT shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age or handicap. SUBRECIPIENT shall take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, age or handicap. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation and selection for training including apprenticeship. SUBRECIPIENT agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

SUBRECIPIENT shall, in all solicitations or advertisements for employees placed by or on behalf of SUBRECIPIENT, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age or handicap.

SUBRECIPIENT shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by CITY'S contracting officers advising the labor union or workers' representative of SUBRECIPIENT commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.

SUBRECIPIENT shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

SUBRECIPIENT shall furnish to the CITY all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the related rules, regulations, and orders.

In the event of SUBRECIPIENT's failure to comply with any rules, regulations, or orders required to be complied with pursuant to this Agreement, CITY may cancel, terminate, or suspend in whole or in part its performance and SUBRECIPIENT may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

SUBRECIPIENT shall include the provisions of Sections A.14.(f)., "Non-Discrimination in Employment", Paragraphs (i) through (vi) in every subcontract or purchase order unless exempted by rules, regulations, or order of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor.

SUBRECIPIENT shall take such action with respect to any subcontract or purchase order as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event SUBRECIPIENT becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the CITY, SUBRECIPIENT may request the United States to enter into such litigation to protect the interests of the United States.

SUBRECIPIENT shall not discriminate on the basis of age in violation of any provision of the Age Discrimination Act of 1975 (42 USC §6101 et seq.) or with respect to any otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 (29 USC §794) and the Americans With Disabilities Act of 1990 (42 USC §12101 et seq.).

SUBRECIPIENT shall also provide ready access to and use of all CDBG fund assisted buildings to physically handicapped persons in compliance with the standards established in the Architectural Barriers Act of 1968 (42 USC §4151 et seq.) and the Americans With Disabilities Act of 1990 (42 USC §12101 et seq.).

16. Ineligibility of SUBRECIPIENT or Contractors. SUBRECIPIENT shall not use CDBG FUNDS directly or indirectly in its operations or to employ, award contracts to, or otherwise engage the services of, or fund any contractor during any period of debarment, suspension, or placement in ineligibility status of the SUBRECIPIENT or such contractor under the provisions of the CDBG REGS.

17. Conflict of Interest in Procurement. In the procurement of supplies, equipment, construction, and services by SUBRECIPIENT, the conflict of interest provisions in 24 CFR 84.42 and 24 CFR 570.611 shall apply.

18. Condition for Religious Organization. SUBRECIPIENT shall comply with all applicable conditions prescribed by HUD for the use of CDBG FUNDS by religious organizations if SUBRECIPIENT is a religious organization.

19. Termination of Agreement.

(a) Termination Without Cause. This Agreement may be terminated in whole or in part at any time by either party giving the other party thirty (30) days' written notice in writing. The reasons and basis for termination shall be set forth in the written notice in compliance with the provisions of the CDBG REGS, in particular 24 CFR 85.44.

In the event the CITY terminates this Agreement, the CITY's City Manager is hereby empowered to give the written notice subject to subsequent ratification by the City Council of the CITY at the next regular meeting of such body at which a quorum duly authorized to act is present, or at a special meeting duly called and held.

(b) Termination for Cause. The CITY may immediately terminate this Agreement upon the termination, suspension, discontinuation, or substantial reduction in HUD CDBG funding for this Agreement's activity.

The CITY may terminate this Agreement if the SUBRECIPIENT fails to comply with the terms of this Agreement. Non-compliance with the terms of this Agreement includes, without limitation, non-performance, slow performance, or substandard performance such as the failure to provide substantially all the services described in [Attachment 1 of this Agreement, or the failure to substantially meet or fulfill the accomplishment goals set forth in Attachment 1 of this Agreement.

Should the CITY decide to terminate this Agreement after a full evaluation of all circumstances has been completed, the SUBRECIPIENT shall, upon written request, have the right to an appeal process. A copy of the appeal process will be attached to any termination notice.

Either party may terminate this Agreement if for any reason the timely completion of the work/services to be provided under this Agreement is rendered improbable, infeasible, or impossible.

Either party may terminate this Agreement for non-performance by the other party of any material provision of this Agreement.

(c) Repayment of Funds by SUBRECIPIENT. In the event this Agreement is terminated, as provided in this section, SUBRECIPIENT agrees to and shall immediately return to CITY any and all unexpended and unencumbered CDBG FUNDS. Further, SUBRECIPIENT shall comply with the provisions of the section of this Agreement relating to Reversion of Assets.

(d) Additional Payment after Notice of Termination at Discretion of CITY. In the event of early termination of the Agreement by either party without cause, at the sole discretion and election of the CITY, the SUBRECIPIENT will be compensated for all services rendered and necessarily incurred costs performed in good faith in accordance with the terms of this Agreement that have been previously eligible for reimbursement and paid, to the date of the notice of termination to the extent that CDBG funds are available from HUD.

In the event of early termination of the Agreement by the CITY for cause (but not due to the non-performance or breach by SUBRECIPIENT), at the sole discretion and election of the CITY, the SUBRECIPIENT will be compensated for all services rendered and necessarily incurred costs performed in good faith in accordance with the terms of this Agreement that have been previously eligible for reimbursement and paid, to the date of the notice of termination to the extent that CDBG funds are available from HUD.

20. Defaults; Remedies. If either party materially fails to comply with any term of this Agreement said non-compliance shall be considered a breach or default hereunder and a basis for termination for cause as hereinbefore provided.

(a) Enforcement by CITY Due to Default by SUBRECIPIENT. In the event of default by SUBRECIPIENT hereunder, the CITY may take one or more of the actions provided under the CDBG REGS, including 24 CFR Part 85.43 and 24 CFR 85.44 relating to "Enforcement" or the CITY may avail itself of any other remedies available at law or equity for breach of this Agreement.

The remedies available to the CITY under 24 CFR Part 85.43 and 24 CFR 85.44 include, without limitation, temporarily withholding cash, disallowing non-compliant costs, wholly or partly terminating the award, and withholding future awards.

(b) Recapture. The SUBRECIPIENT shall have the affirmative obligation to repay, and the CITY shall have the affirmative right (but not the obligation) to recapture from SUBRECIPIENT all (or any portion of) CDBG FUNDS disbursed to SUBRECIPIENT hereunder in the event of

SUBRECIPIENT's default hereunder or in the event SUBRECIPIENT refuses to accept or fails to comply with any conditions which may subsequently be imposed by HUD for the operation of the CDBG Program.

21. Reversion of Assets.

(a) Unencumbered or Unexpended Funds. Upon the termination or expiration of the term of this Agreement, CONTRACTOR shall transfer to CITY any unexpended and unencumbered CDBG FUNDS on hand at the time of such termination or expiration and any accounts receivable attributable to the use of subject funds.

(b) Real or Personal Property Assets. Any real property or moveable or immovable personal property under SUBRECIPIENT's control or ownership that was acquired or improved in whole or in part with CDBG FUNDS disbursed under this Agreement, the original cost of which exceeded five thousand dollars ($5000.00) shall either be, at the election of ADMINISTRATOR: (1) used by SUBRECIPIENT for the eligible program services meeting the purposes of the CDBG Program for a period of five (5) years after termination or expiration of this Agreement; or (2) disposed of and proceeds paid to CITY in a manner that results in CITY being reimbursed in the amount of the current fair market value (assuming depreciation in accordance with customary business practices) of the real or personal property less any portion of the current value attributable to SUBRECIPIENT's out of pocket expenditures using non-CDBG Program funds for acquisition of, or improvement to, such real or personal property and less any direct and reasonable costs of disposition, including a reasonable and customary broker's fee incurred in listing and completion of sale of such asset.

In furtherance of the foregoing, if CITY selects continued use of the capital asset, then SUBRECIPIENT hereby agrees that it shall be subject to an ongoing operating and use covenant relating to the subject real or personal property. The foregoing covenant shall survive the termination or expiration of this Agreement and shall be actionable at law or in equity by CITY against SUBRECIPIENT and its successors in interest.

In the event CITY selects disposition of the subject real or personal property, then SUBRECIPIENT shall exercise due diligence to dispose of such property in conformity with applicable laws and regulations and in accordance with customary business practices. The net proceeds of such disposition shall be disbursed directly to and be payable to CITY upon the close of the applicable disposition transaction, such as close of escrow for the sale of real property, transfer of a motor vehicle "pink slip" in accordance with applicable California Vehicle Code requirements, or completion of sale of personal property by bill of sale in accordance with UCC requirements.

22. Independent Contractor. SUBRECIPIENT agrees that the performance of obligations hereunder is rendered in its capacity as an independent contractor and that it is in no way an employee or agent of the CITY.

23. Licensing. SUBRECIPIENT agrees to obtain and maintain all licenses, registrations, accreditation and inspections from all agencies governing its operations. SUBRECIPIENT shall insure that its staff shall also obtain and maintain all required licenses, registrations, accreditations, and inspections from all agencies governing SUBRECIPIENT'S operations and work hereunder.

24. Inspection of Records. CITY and the United States Government and/or their representatives shall have access, for purposes of monitoring, auditing, and examining SUBRECIPIENT's activities and performance, to books, records, reports, documents, and papers, and the right to examine

comparable records of SUBRECIPIENT'S subcontractors, bookkeepers and accountants, employees and participants in regard to said program.

(a) **Monitoring**. CITY and the United States Government and/or their representatives shall also schedule on-site monitoring at their discretion. Monitoring activities may also include, but are not limited to, questioning employees and participants in said program and entering any premises or any site in which any of the services or activities funded hereunder are conducted or in which any of the records of SUBRECIPIENT are kept. Nothing herein shall be construed to require access to any privileged or confidential information as set forth in federal or state law.

(b) **Failure to Provide Records**. In the event SUBRECIPIENT does not make the above-referenced records available within the City of Costa Mesa, California, SUBRECIPIENT agrees to pay all necessary and reasonable expenses incurred by CITY in conducting any audit at the location where said records and books of account are maintained.

25. Assignability. SUBRECIPIENT shall not assign or transfer any interest in this Agreement, whether by assignment, delegation or novation, without the prior written consent of CITY, in the sole discretion of the CITY; provided, however, that claims for money due or to become due to SUBRECIPIENT from CITY under this Agreement may be assigned to a bank, trust company or other financial institution, or to a trustee in bankruptcy, without such approval. Any assignment delegation or novation other than as provided above shall be void and inoperative. Written notice of any request for an assignment or transfer shall be promptly furnished to CITY and the CITY shall exercise reasonable diligence in reviewing and approving or disapproving such request.

26. Prohibition of Expending CDBG FUNDS to Obtain other Funding. SUBRECIPIENT shall in no event expend CDBG FUNDS granted hereunder to fund another service provider, to pay a contractor for services outside the scope of this Agreement, to apply for other public agencies' program funds, or to supplant another funding source, unless expressly approved by the CITY.

27. Indemnification. SUBRECIPIENT shall indemnify, defend, save harmless, and pay CITY, its officers, employees, and agents, from and against any and all damages to property or injuries to or death of any person or persons, including property of officers, employees, or agents of CITY, resulting from, related in any manner to, or arising out of the intentional or malicious acts, inaction, errors, or omissions, or negligent acts, inaction, errors or omissions of SUBRECIPIENT, its officers, employees, agents, and/or subcontractors.

SUBRECIPIENT shall indemnify, defend, save harmless, and pay CITY, its officers, employees, and agents, from and against any and all claims, demands, suits, actions or proceedings of any kind or nature relating to workers' compensation claims, resulting from, related in any manner to, or arising out of the intentional or malicious acts, inaction, errors, or omissions, or negligent acts, inaction, errors or omissions of SUBRECIPIENT, its officers, employees, agents, and/or subcontractors

28. Insurance.

(a) SUBRECIPIENT shall furnish the City of Costa Mesa insurance certificates from its workers' compensation insurance carrier certifying that it carries such insurance and that the policy shall not be canceled nor the coverage reduced except upon thirty (30) days' prior written notice to CITY at the address specified in this Agreement.

(b) SUBRECIPIENT shall obtain, at its sole cost, a comprehensive general liability and auto insurance policy or policies insuring against liability for any and all claims and suits for damage or injuries to persons or property resulting from or arising out of operations of SUBRECIPIENT, its officers, agents, or employees. Said policy or policies of insurance shall provide coverage for both bodily injury and property damages in not less than the following minimum amounts: One Million Dollars ($1,000,000) combined single limit, or its equivalent. Said policy or policies shall also contain a provision that no termination, cancellation or change of coverage of any insured or additional insured shall be effective until thirty (30) days' notice thereof has been given in writing to CITY at the address specified in this Agreement. SUBRECIPIENT shall file with the City of Costa Mesa prior to exercising any right or performing any obligation pursuant to this Agreement, and maintain for the period covered by this Agreement, a policy or policies of general liability insurance, or certificate of such insurance, satisfactory to the City Attorney expressly naming the City of Costa Mesa as additional insured.

(c) SUBRECIPIENT shall give CITY prompt and timely notice of any claim made or suit instituted. SUBRECIPIENT shall procure and maintain, at its own cost and expense, any additional kinds and amounts of insurance, which, in its own judgment may be necessary for its proper protection in the prosecution of the work.

B. CITY OBLIGATIONS.

1. Payment of Funds. CITY shall disburse to SUBRECIPIENT from CDBG FUNDS, when, if and to the extent received from HUD, amounts expended by SUBRECIPIENT in carrying out said program pursuant to this Agreement in quarterly installments determined by CITY. Payment shall be made to SUBRECIPIENT through the submission of quarterly invoices, in a form prescribed by CITY, detailing such expenses. Invoices must include documentation of expenses by receipts, time records, invoices, canceled checks, or other appropriate documentation which fully and completely discloses the amount (s) and nature(s) of the expenditure. CITY shall pay such invoices within thirty (30) days after receipt thereof, provided CITY is satisfied that such expenses have been incurred and documented within the scope and provisions of this Agreement and in conformity with the CDBG REGS and that SUBRECIPIENT is in compliance with the terms and conditions of this Agreement.

(a) **Sole Source of Funding is CDBG Program Funds**. The SUBRECIPIENT expressly acknowledges and agrees that the sole source of funding available to the CITY to meet its funding obligation to SUBRECIPIENT under this Agreement is from CDBG Program funds allocated to and paid to the CITY by HUD and that no other source of revenues or funding is made available, offered, or construed to be provided hereunder by CITY to SUBRECIPIENT. To the extent CITY is not allocated and/or does not receive the CDBG funds necessary to pay SUBRECIPIENT pursuant to the terms of this Agreement, then SUBRECIPIENT acknowledges and agrees there is no other funding source available or committed to meet the CITY'S funding described hereunder and no payment obligation of the CITY shall exist or be construed to exist.

2. Audit of Account. CITY shall include an audit of the records and accounts maintained by SUBRECIPIENT pursuant to Section A.11. of this Agreement in CITY'S annual audit of all CDBG funds pursuant to CDBG REGS, Title 24 of the Code of Federal Regulations, and other applicable federal laws and regulations.

C. MISCELLANEOUS PROVISIONS.

1. SUBRECIPIENT'S Failure to Comply with Agreement. Additionally, the CITY shall have the right, in accordance with 24 CFR 85.43, to terminate this Agreement immediately and/or

withhold payment of any invoice for failure of the SUBRECIPIENT to comply with any term or condition of this Agreement after a full evaluation of all circumstances has been completed. Such non-compliance with this Agreement includes, without limitation, non-performance, slow performance, or substandard performance such as the failure to provide substantially all the services described in Attachment 1 of this Agreement or the failure to substantially meet or fulfill the goals set forth in Attachment 1 of this Agreement.

(a) Should the CITY decide to terminate this Agreement after a full evaluation of all circumstances has been completed, the SUBRECIPIENT shall be given notice of the termination and the SUBRECIPIENT shall, upon written request, have the right to an appeal process.

(b) A copy of the appeal process will be attached to the notice of termination.

(c) If the CITY finds that the SUBRECIPIENT has violated a term or condition of this Agreement, the SUBRECIPIENT may, at the City's sole discretion, be required to:

Repay all monies received from the CITY under this Agreement; and/or

Transfer possession of all materials and equipment purchased with grant money to the CITY.

(d) In the case of termination pursuant to this section, a final payment may, at the City's sole discretion, be made to the SUBRECIPIENT upon receipt of a Final Report and invoices covering eligible costs incurred prior to termination. The total of all payments, including the final payment, shall not exceed the amount of CDBG FUNDS specified in this Agreement.

(e) The CITY may immediately terminate this Agreement upon the termination, suspension, discontinuation, or substantial reduction in HUD CDBG funding for this Agreement's activity or if for any reason the timely completion of the work/services to be provided under this Agreement is rendered improbable, infeasible, or impossible.

(f) If the SUBRECIPIENT fails to comply with any term or condition of this Agreement, CITY may, at its sole discretion, take one or more of the actions provided under the CDBG REGS, including 24 CFR Part 85.43 and 24 CFR 85.44 relating to "Enforcement." Such non-compliance may include, without limitation, non-performance, slow performance, or substandard performance.

The remedies available to the CITY under 24 CFR Part 85.43 and 24 CFR 85.44 include, without limitation, temporarily withholding cash, disallowing non-compliant costs, wholly or partly terminating the award, withholding future awards, and any other remedies available at law or equity.

In the event if such noncompliance, the SUBRECIPIENT will be compensated for all services rendered and necessarily incurred costs, which, in the City's sole determination, were performed in good faith in accordance with the terms of this Agreement that have been previously eligible for reimbursement and paid, to the date of the notice of termination to the extent that CDBG funds are available from HUD.

In the event this Agreement is terminated, as provided in this section, SUBRECIPIENT agrees to and shall immediately return to CITY any and all funds not used and to comply with the provisions of the Reversion of Assets section of this Agreement.

2. Notices. All notices to the parties required by this Agreement shall be in writing and shall be sent by certified mail, addressed as follows:

TO CITY: City of Costa Mesa
Housing & Community Development
Department
P.O. Box 1200
Costa Mesa, California 92628-1200

TO SUBRECIPIENT: **Executive Director**
Council on Aging – Orange County
1971 E Fourth Street
Santa Ana CA 92705

3. No Disposition of Assets Acquired with CDBG FUNDS. SUBRECIPIENT shall not dispose of any real or personal property acquired in full or in part with CDBG FUNDS through sale, use or relocation without the express and prior written permission of the CITY.

4. Disbursement Pursuant to Agreement. SUBRECIPIENT acknowledges that the CITY shall disburse funds to SUBRECIPIENT only upon execution of this Agreement and CITY is empowered to provide funds to SUBRECIPIENT only pursuant to the provisions of this Agreement.

5. Drug-Free Work Place Policy. SUBRECIPIENT, upon notification of contract award, shall establish a Drug-Free Awareness Program to inform employees of the dangers of drug abuse in the work place, the penalties that may be imposed upon employees for drug abuse violations occurring in the work place, and the employee assistance programs available to employees. Each employee engaged in the performance of a SUBRECIPIENT contract must be notified of this Drug-Free Awareness Program, and must abide by its terms. SUBRECIPIENT shall conform to all the requirements of CITY'S Policy No. 100-5, attached hereto as Attachment 2. Failure to establish a program, notify employees, or inform the CITY of a drug-related work place conviction will constitute a material breach of contract and cause for immediate termination of the contract by the CITY.

6. No Use of CDBG FUNDS for Lobbying. SUBRECIPIENT shall not expend any grant funds for the purpose of influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any federal grant or loan, the entering into of any cooperative federal agreement, and/or the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.

SUBRECIPIENT shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" if it expends any funds other than grant funds for the purpose of influencing or attempting to influence the persons listed in the above paragraph.

7. Constitutional Use Of Funds. As an express condition to this Agreement, SUBRECIPIENT, agrees that the funds provided by the CITY to SUBRECIPIENT hereunder shall not be used to promote any religion, religious creed or cult, denomination, sectarian organization or religious belief or to fund any proselytizing activities. The parties agree the foregoing covenant is intended to and shall be construed for the limited purpose of assuring compliance with respect to the use of CITY

funds by SUBRECIPIENT with applicable constitutional limitations respecting the establishment of religion as set forth in the establishment clause under the First Amendment of the United States Constitution and Article I, Section 4 of California Constitution, and is not in any manner intended to restrict other activities of SUBRECIPIENT.

8. Coalition and Collaboration SUBRECIPIENT. CDBG funds allocated to coalition and collaboration SUBRECIPIENT's (including SUBRECIPIENT, if applicable) must establish an additional reporting system to report services provided to eligible persons or households under the auspices of their combined program efforts. This additional reporting system must include the names, income, ethnicity, age, and head of household information of assisted persons or households. Additionally, the reporting system must describe the services provided by each coalition or collaboration SUBRECIPIENT to individual persons or households, and the end result of the combined services.

IN WITNESS WHEREOF, the CITY and SUBRECIPIENT have caused this Agreement to be executed by their duly authorized officers on the day and year first above written.

CITY

CITY OF COSTA MESA, a California municipal corporation

[redacted]

Mayor of the City of Costa Mesa

ATTEST:

[redacted]

City Clerk of the City of Costa Mesa

APPROVED AS TO FORM:

By: [redacted]

City Attorney's Office
City of Costa Mesa

SUBRECIPIENT

[redacted]

President & CEO

Title

August 9, 2013

Date

Title

Date

Attachment 1 - Scope of Work
CITY OF COSTA MESA
Community Development Block Grant

I. ***A. Output Measurements:*** Total number of unduplicated clients anticipated to be served by the CDBG-funded program during the 12-month contract period (*regardless of community of residence*) = 27,107 **INDIVIDUALS**

B. Number of unduplicated **Costa Mesa** residents to be served with grant funds during the 12-month contract period = **34 INDIVIDUALS**

C. Of the Costa Mesa residents to be assisted:

- How many will have new or continued access to this service or benefit? 34 INDIVIDUALS
- How many will have improved access to this services or benefit? 0 INDIVIDUALS
- How may will receive a service or benefit that is no longer substandard? 0 INDIVIDUALS

Total: 34 INDIVIDUALS

II. ***Schedule of Performance:*** Estimate the number of **unduplicated Costa Mesa** residents to be served during the 12-month contract period per quarter:

Quarter 1: July 1 – September 30	9 INDIVIDUALS
Quarter 2: October 1 – December 31	8 INDIVIDUALS
Quarter 3: January 1 – March 31	9 INDIVIDUALS
Quarter 4: April 1 – June 30	8 INDIVIDUALS
Total	**34 INDIVIDUALS**

III. ***Invoicing Schedule:*** Estimate the amount of grant funds to be requested during the 12-month contract period on a quarterly basis:

Quarter 1: July 1 – September 30	$1,250.00
Quarter 2: October 1 – December 31	$1,250.00
Quarter 3: January 1 – March 31	$1,250.00
Quarter 4: April 1 – June 30	$1,250.00
Total	**$5,000.00**

IV. *Outcome Measurements*

Activity: Select one from the below that best describes your program	**Primary Objective: Select one** from the below that best describes your program	**Primary Outcome Measurement: Select one** from the below that best describes your program	**Outcome Measurement Tool(s):** Summarize the means by which outcomes will be tracked, measured & reported
☒ Senior Service ☐ Youth Service ☐ Homeless Service ☐ Disabled Service ☐ Low/Mod-Income Service ☐ Fair Housing Services	☒ Create a suitable living environment: activity that benefits the community, families or individuals by addressing living environment issues ☐ Provide decent affordable housing: housing activity that meets individual family or community needs (do not be use for activities where housing is an element of a larger effort, e.g., transitional housing) ☐ Create economic opportunities: activity related to economic development, commercial revitalization & job creation	☒ Availability/Accessibility: activity that makes services, infrastructure, housing &/or shelter available & accessible (accessibility does not refer only to physical barriers) ☐ Affordability: activity provides affordability in a variety of ways including the creation or maintenance of affordable housing, basic infrastructure hookups, or services (e.g., transportation or daycare) ☐ Sustainability – activity promotes livable or viable communities and neighborhoods by providing services or by removing slums or blighted areas.	Ombudsman (Intake Form) includes impact of all reported complaints/concerns in 7 areas of activity: Quality of Life, Placement, Physical Environment, Quality of Care, Financial Issues, Privacy Rights & End of Life Issues. Effectiveness (measured Outcomes) is recorded as "Ombudsman had a positive impact" or "Ombudsman unable to impact" Quarterly Summary reports % of positive outcomes for each

V. ***Description of Work:*** In space below, summarize the program to be funded during the 12-month contract period. Include services to be provided, program goals & how grant funds will be used.
The Long-Term Care Ombudsman Program is a state and federally mandated program. State certified Ombudsmen empower residents of licensed long-term care facilities & act on behalf of those unable to advocate for themselves. Ombudsmen also witness the signing of Advanced Health Care Directives in facilities Ombudsmen make regular unannounced visits to licensed nursing homes & residential care facilities. 60% of complaints received are submitted during a regular Ombudsman visit. This means we must visit often & maintain a presence. In order to accomplish this effectively, funding is needed

GOALS: The goals of the Long-Term Care Ombudsman program are to help those living in long-term care facilities maintain and/or improve quality of life. This is accomplished through advocacy, mediation, complaint investigation, complaint resolution and, if indicated, appropriate referrals.
MISSION: The Long-Term Care Ombudsman Program has as its mission to empower residents and to act on behalf of those unable to act for themselves. Ombudsmen have legal access to facilities to make unannounced visits. The Ombudsman program is the ONLY mandated program that provides regular visits to all licensed nursing homes & residential care facilities; the ONLY advocate for the rights of the elderly, frail elderly and disabled residentsThe program is state & federally mandated, thus we receive state & federal funding. This enables the program to operate at marginal levels, Facilities located in cities that supplement our program receive more frequent Ombudsmen visits. Funding from the City of Costa Mesa will be used for salary & benefits for the Ombudsman (resident advocate) serving the elderly in the City of Costa Mesa

VI. 2013-2014 Program Budget

BUDGET CATEGORY	PROPOSED USE OF CDBG FUNDS	PROPOSED USE OF OTHER PROGRAM FUNDS	TOTAL PROGRAM COSTS
Agency Administration Staff Salaries & Benefits	$	$54,645	$54,645
Program Staff Salaries & Benefits	$5,000	$377,475	$382,475
Program Supplies	$	$42,327	$42,327
Rent/Lease	$	$23,995	$23,995
Communications	$	$3,760	$3,760
Utilities	$	$0	$0
Professional Services (Specify) Audit	$	$5,613	$5,613
Insurance	$	$4,000	$4,000
Other (Specify) I.T.support	$	$8,526	$8,526
Other (Specify) Volunteer Training	$	$17,283	$17,283
Other (Specify)	$	$	$
Other (Specify)	$	$	$
TOTAL	**$5,000**	*** $537,624**	**$542,624**

List Source of "Other" Program Revenue Already Committed To Program

SOURCE OF OTHER PROGRAM REVENUE	AMOUNT OF OTHER PROGRAM FUNDS
Grant funding	$52,785
State, Federal, County funding/Orange Co. Office on Aging	$427,664
CY Award	$60,000
Donations	$2,175
	$
TOTAL	*** $542,624**

*** Note: your program must demonstrate financial viability. At a minimum, the total of "'Other' Program Revenue Already Committed To Program "must equal the "PROPOSED USE OF OTHER PROGRAM FUNDS"**

VII. CDBG Funded Personnel - only list personnel that will be paid with CDBG funds and that have been listed as part of the 2013-2014 Program Budget.

☐ NOT APPLICABLE

AGENCY ADMINISTRATION

POSITION TITLE	ANNUAL SALARY	ANNUAL BENEFITS	TOTAL COMPENSATION	CDBG FUNDS REQUESTED	% OF TIME POSITION IS DEDICATED TO COSTA MESA CDBG ACTIVITY
Certified Long Term Care Ombudsman	$5,000	$	$5,000	$5,000	100%
	$	$	$	$	%
	$	$	$	$	%
	$	$	$	$	%
	$	$	$	$	%

PROPOSED PROGRAM STAFF

POSITION TITLE	ANNUAL SALARY	ANNUAL BENEFITS	TOTAL COMPENSATION	CDBG FUNDS REQUESTED	% OF TIME POSITION IS DEDICATED TO COSTA MESA CDBG ACTIVITY
	$	$	$	$	%
	$	$	$	$	%
	$	$	$	$	%
	$	$	$	$	%
	$	$	$	$	%

PROPOSED PROGRAM CONTRACT STAFF

POSITION TITLE	ANNUAL SALARY	ANNUAL BENEFITS	TOTAL COMPENSATION	CDBG FUNDS REQUESTED	% OF TIME POSITION IS DEDICATED TO COSTA MESA CDBG ACTIVITY
	$	$	$	$	%
	$	$	$	$	%
	$	$	$	$	%

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	1 of 3

BACKGROUND

Under the Federal Drug-Free Workplace Act of 1988, passed as part of omnibus drug legislation enacted November 18, 1988, contractors and grantees of Federal funds must certify that they will provide drug-free workplaces. At the present time, the City of Costa Mesa, as a sub-grantee of Federal funds under a variety of programs, is required to abide by this Act. The City Council has expressed its support of the national effort to eradicate drug abuse through the creation of a Substance Abuse Committee, institution of a City-wide D.A.R.E. program in all local schools and other activities in support of a drug-free community. This policy is intended to extend that effort to contractors and grantees of the City of Costa Mesa in the elimination of dangerous drugs in the workplace.

PURPOSE

It is the purpose of this Policy to:

1. Clearly state the City of Costa Mesa's commitment to a drug-free society.

2. Set forth guidelines to ensure that public, private, and nonprofit organizations receiving funds from the City of Costa Mesa share the commitment to a drug-free workplace.

POLICY

The City Manager, under direction by the City Council, shall take the necessary steps to see that the following provisions are included in all contracts and agreements entered into by the City of Costa Mesa involving the disbursement of funds.

1. Contractor or Sub-grantee hereby certifies that it will provide a drug-free workplace by:

    a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in Contractor's and/or sub-grantee's workplace, specifically the job site or location included in this contract, and specifying the actions that will be taken against the employees for violation of such prohibition;

b. Establishing a Drug-Free Awareness Program to inform employees about:

1. The dangers of drug abuse in the workplace;

2. Contractor's and/or sub-grantee's policy of maintaining a drug-free workplace;

3. Any available drug counseling, rehabilitation and employee assistance programs; and

4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

c. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by subparagraph A;

d. Notifying the employee in the statement required by subparagraph 1 A that, as a condition of employment under the contract, the employee will:

1. Abide by the terms of the statement; and

2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

e. Notifying the City of Costa Mesa within ten (10) days after receiving notice under subparagraph 1 D 2 from an employee or otherwise receiving the actual notice of such conviction;

f. Taking one of the following actions within thirty (30) days of receiving notice under subparagraph 1 D 2 with respect to an employee who is so convicted:

1. Taking appropriate personnel action against such an employee, up to and including termination; or

2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health agency, law enforcement, or other appropriate agency;

g. Making a good faith effort to maintain a drug-free workplace through implementation of subparagraphs 1 A through 1 F, inclusive.

2. Contractor and/or sub-grantee shall be deemed to be in violation of this Policy if the City of Costa Mesa determines that:

   a. Contractor and/or sub-grantee has made a false certification under paragraph 1 above;

   b. Contractor and/or sub-grantee has violated the certification by failing to carry out the requirements of subparagraphs 1 A through 1 G above;

   c. Such number of employees of Contractor and/or sub-grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the contractor and/or sub-grantee has failed to make a good faith effort to provide a drug-free workplace.

3. Should any contractor and/or sub-grantee be deemed to be in violation of this Policy pursuant to the provisions of 2 A, B, and C, a suspension, termination or debarment proceeding subject to applicable Federal, State, and local laws shall be conducted. Upon issuance of any final decision under this section requiring debarment of a contractor and/or sub-grantee, the contractor and/or sub-grantee shall be ineligible for award of any contract, agreement or grant from the City of Costa Mesa for a period specified in the decision, not to exceed five (5) years. Upon issuance of any final decision recommending against debarment of the contractor and/or sub-grantee, the contractor and/or sub-grantee shall be eligible for compensation as provided by law.