2016-2017 SUBRECIPIENT AGREEMENT

BETWEEN THE CITY OF COSTA MESA, AS GRANTEE UNDER THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM, AND COUNCIL ON AGING OF ORANGE COUNTY

Date Approved: **May 3, 2016**

Amount of Grant: **$14,500.00**

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

This SUBRECIPIENT AGREEMENT (Agreement) is entered into as of July 1, 2016 (Effective Date) by and between the CITY OF COSTA MESA (CITY), a California municipal corporation and a grantee under the U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) Program, and COUNCIL ON AGING OF ORANGE COUNTY, a nonprofit corporation (SUBRECIPIENT).

WHEREAS, the primary objective of the Housing and Community Development Act of 1974, 42 U.S.C. § 5301 *et seq.*, as amended (the Act), and the CDBG Program is the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income; and

WHEREAS, CITY has applied for and received CDBG funds from HUD under the Act; and

WHEREAS, pursuant to Title 24, Part 570 of the Code of Federal Regulations (24 CFR 570, *et seq.*) (CDBG Regulations), CITY may engage certain organizations to assist in utilizing CDBG funds pursuant to subrecipient agreements, provided that the activities funded are eligible for funding and meet a national objective; and

WHEREAS, eligible activities are set forth at 24 CFR 570.201-207; and

WHEREAS, each CDBG-funded activity must meet one of the following national objectives: (1) benefit low- and moderate-income persons; (2) prevent or eliminate blight; or (3) meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community, and other financial resources are not available to meet such needs; and

WHEREAS, CITY has determined that SUBRECIPIENT'S activities are eligible for funding and meet one of the national objectives; and

WHEREAS, CITY desires to grant a portion of its CDBG allocation for the Fiscal Year 2016-2017 to SUBRECIPIENT for the purpose of providing services, such as investigation of complaints, to nursing homes and residential care facilities in Costa Mesa as set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions set forth herein, the parties hereby agree as follows:

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, SUBRECIPIENT will make referrals to appropriate licensing agencies. In accordance with CITY requirements, SUBRECIPIENT shall ensure that at least seventy percent (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. SUBRECIPIENT represents and warrants that it 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.

3. Term of Agreement. Subject to the terminations provisions set forth herein, the term of this Agreement is from **July 1, 2016** through **June 30, 2017,** except that 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 Fourteen Thousand Five Hundred Dollars ($14,500.00) (CDBG FUNDS) and SUBRECIPIENT shall expend such funds within a time period not exceeding twelve (12) consecutive months following the Effective Date of this Agreement. CITY will disperse CDBG FUNDS 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 Regulations (Quarterly Activity Report).

(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 Part 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 or in the event a conflict or potential conflict of interest arises after or execution of this Agreement SUBRECIPIENT shall fully disclose the conflict or potential conflict within fifteen (15) days of becoming aware of same, and said writing shall be attached and deemed fully incorporated as a part hereof.

7. Use of CDBG FUNDS.

(a) Income Prohibited. SUBRECIPIENT agrees that it shall not use CDBG FUNDS in any manner that provides income to SUBRECIPIENT. Any earned interest income on funds generated through the use of investment of funds received from CDBG FUNDS 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.

(b) Program Income. The use of program income by the SUBRECIPIENT shall comply with the requirements set forth at 24 CFR 570.504. SUBRECIPIENT may use such income during the term of this Agreement for activities permitted under this Agreement and shall reduce requests for additional funds by the amount of any such program income balances on hand. 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 Agreement.

(c) Unexpended Program Income. All unexpended program income shall be returned to the CITY at the end of the term as required by 24 CFR 570.503(b)(7). Any interest earned on cash advances from the United States 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 Regulations, including the following:

(a) Records: Documentation evidencing program income requirements in conformity with CDBG Regulations 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 from the SUBRECIPIENT program. Household information shall include number of persons, identification of head of household, race/ethnicity, age of children, seniors, and income verification.

(ii) Documentation of all CDBG FUNDS received from CITY.

(iii) 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.

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

(b) Reports:

(i) Payment Requests.

(ii) Quarterly Activity Reports, including outcome measurements.

(iii) 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 2 CFR 200.501 *et seq.*, to the extent the CDBG FUNDS granted to SUBRECIPIENT by the CITY under this Agreement exceed $750,000.00 in federal funds.

10. Uniform Administration Requirements. 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 requirements set forth in 2 CFR 200 *et seq.* SUBRECIPIENT is not required to maintain separate depository accounts for CDBG FUNDS; provided however, that SUBRECIPIENT must be able to account for receipt, obligation and expenditure of CDBG FUNDS pursuant to applicable 2 CFR 200.302 *et seq.* requirements and any other applicable law.

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 Regulations. 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 shall comply with all applicable federal, state, and local laws, ordinances, regulations, and permits, including but not limited to all CDBG Regulations relating to financial and contractual procedures, and 2 CFR 200 *et seq.* and as set forth in 24 CFR 570.502(b), which are on file in the City of Costa Mesa, 77 Fair Drive, Costa Mesa, California 92626, and are fully incorporated herein by reference. If applicable, SUBRECIPIENT shall further comply with the requirements of Part 570 of Title 24 of the Code of Federal Regulations, including subpart K of Part 570, except that SUBRECIPIENT does not assume CITY'S environmental responsibilities described in 24 CFR 570.604 or City's responsibility for initiating the review process under 24 CFR Part 52.

(a) 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) 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. Non-Discrimination; ADA Compliance.

(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 disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military or veteran status, except as permitted by California Government Code Section 12940. Violation of this provision may result in the imposition of penalties referred to in California 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.

(c) 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, religion, or sex:

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

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

(iii) Segregate 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.

(iv) 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.

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

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

(d) 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, religion, 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, religion, or sex.

(e) 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 will 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, religion, 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.

(f) Overcoming Effects of Prior Discrimination. If SUBRECIPIENT has previously discriminated against persons on the grounds of race, color, national origin, religion, or sex, SUBRECIPIENT must take affirmative action to overcome the effects of prior discrimination, as and pursuant to applicable requirements of the CDBG Regulations and other applicable federal laws and regulations.

(i) Even in the absence of prior discrimination, SUBRECIPIENT 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, religion or sex. Where previous discriminatory practice or usage tends, on the grounds of race, color, national origin, religion, 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, SUBRECIPIENT shall 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.

(ii) 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.

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

(h) Non-Discrimination in Employment.

(i) SUBRECIPIENT shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age or disability. 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 disability. 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 shall post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(ii) 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 disability.

(iii) 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 11246 of September 24, 1965, as amended, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.

(iv) SUBRECIPIENT shall comply with all provisions of Executive Order 11246, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(v) SUBRECIPIENT shall furnish to the CITY all information and reports required by Executive Order 11246, as amended, and by the related rules, regulations, and orders.

(vi) If SUBRECIPIENT fails 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 under this Agreement and SUBRECIPIENT may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246, as amended, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246, as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(vii) SUBRECIPIENT shall include the provisions of paragraphs (i) through (vi) of this section (Non-Discrimination in Employment), 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 11246, as amended, so that such provisions will be binding upon each subcontractor or vendor.

1 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. However, if SUBRECIPIENT becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by CITY, SUBRECIPIENT may request the United States to enter into such litigation to protect the interests of the United States.

(viii) 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 disabled individual as provided in Section 504 of the Rehabilitation Act of 1973 (29 USC § 701 *et seq.*) and the Americans With Disabilities Act of 1990, as amended (42 USC §12101 *et seq.*) (ADA).

(ix) SUBRECIPIENT shall also provide ready access to and use of all CDBG FUNDS assisted buildings to physically disabled persons in compliance with the standards established in the Architectural Barriers Act of 1968 (42 USC §4151 *et seq.*) and the ADA.

15. <u>Ineligibility of SUBRECIPIENT or Contractors</u>. 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 Regulations.

16. Conflict of Interest in Procurement. SUBRECIPIENT shall comply with all applicable conflict of interest provisions set forth in 2 CFR Part 200 and 24 CFR 570.611 in the procurement of supplies, equipment, construction, and services by SUBRECIPIENT.

17. 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.

18. 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 Regulations, in particular 24 CFR 85.44.

In the event CITY terminates this Agreement, CITY's City Chief Executive Officer (CEO) may 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. 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 SUBRECIPIENT fails to comply with the terms of this Agreement. Noncompliance 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.

If CITY decides to terminate this Agreement after a full evaluation of all circumstances has been completed, 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 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 CITY'S sole discretion, SUBRECIPIENT may be compensated for all services rendered through the date of notice of termination and necessarily incurred costs performed in good faith in accordance with the terms of this Agreement that have been previously eligible for reimbursement, to the extent that CDBG funds are available from HUD.

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

19. Defaults; Remedies. If either party materially fails to comply with any term of this Agreement, said noncompliance shall be considered a breach or default hereunder and a basis for termination for cause as provided herein.

(a) Enforcement by CITY Due to Default by SUBRECIPIENT. In the event of default by SUBRECIPIENT, CITY may take one or more of the actions provided under CDBG Regulations, including, but not limited to, 24 CFR 85.43 relating to enforcement, or the CITY may avail itself of any other remedies available at law or equity for breach of this Agreement.

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

(b) Recapture. SUBRECIPIENT shall have the affirmative obligation to repay, and 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.

20. Reversion of Assets.

(a) Unencumbered or Unexpended Funds. Upon the termination or expiration of the term of this Agreement, SUBRECIPIENT 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 is acquired or improved in whole or in part with CDBG FUNDS disbursed under this Agreement, the original cost of which exceeds five thousand dollars ($5,000.00) shall either be, at the election of CITY: (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.

(i) 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.

(ii) 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 Uniform Commercial Code (UCC) requirements.

21. Independent Contractor. SUBRECIPIENT is and shall be acting at all times as an independent contractor and not as an employee or agent of CITY. Neither CITY nor any of its employees shall have any control over the conduct of SUBRECIPIENT, its agents or employees, except as set forth in this Agreement.

22. Licensing. SUBRECIPIENT shall obtain and maintain all required licenses, registrations, accreditation and inspections from all agencies governing its operations. SUBRECIPIENT shall ensure 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.

23. 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 may 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 shall 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.

24. 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, except 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 CITY shall exercise reasonable diligence in reviewing and approving or disapproving such request.

25. Prohibition of Expending CDBG FUNDS to Obtain Other Funding. SUBRECIPIENT shall not 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 in writing by CITY.

26. Indemnification. SUBRECIPIENT shall indemnify, defend, and hold free and harmless CITY, its elected officials, officers, employees, agents, and volunteers from and against any and all claims, actions, suits or other legal proceedings brought against CITY, its elected officials, officers, employees, agents and volunteers for any damage whatsoever, including without limitation death or injury to any person or injury to any property 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, volunteers and/or subcontractors in connection with this Agreement.

SUBRECIPIENT shall indemnify, defend, and hold free and harmless CITY, its elected officials, officers, employees, agents, and volunteers, 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 in connection with this Agreement.

27. Insurance

(a) SUBRECIPIENT shall furnish to CITY 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, employees, or volunteers. 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 ($1,000,000.00) combined single limits, 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 CITY 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 obtain, at its sole cost, business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars ($1,000,000.00), combined single limits, per occurrence for bodily injury and property damage.

(d) 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 based on 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 that fully and completely discloses the amount(s) and nature(s) of the expenditures. 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 Regulations and that SUBRECIPIENT is in compliance with the terms and conditions of this Agreement.

(a) Sole Source of Funding is CDBG Program Funds. SUBRECIPIENT expressly acknowledges and agrees that the sole source of funding available to CITY to meet its funding obligation to SUBRECIPIENT under this Agreement is from CDBG Program funds allocated to and paid to 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 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 Regulations, 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. 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 noncompliance 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 CITY decide to terminate this Agreement after a full evaluation of all circumstances has been completed, CITY shall give SUBRECIPIENT notice of the termination and SUBRECIPIENT shall, upon written request, have the right to an appeal process. A copy of the appeal process will be attached to the notice of termination. A copy of the appeal process will be attached to the notice of termination.

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

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

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

(c) 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.

(d) 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.

(e) If 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 85.43 relating to enforcement. Such noncompliance may include, without limitation, non-performance, slow performance, or substandard performance.

The remedies available to the CITY under 24 CFR 85.43 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 of such noncompliance, SUBRECIPIENT will be compensated for all services rendered through the date of the notice of termination and for necessarily incurred costs, which, in 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 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. <u>Notices</u>. 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 77 Fair Drive Costa Mesa, California 92626
TO SUBRECIPIENT:	Executive Director Council on Aging of 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 Council 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 this Agreement by CITY.

6. No Use of CDBG FUNDS for Lobbying. SUBRECIPIENT shall not expend any CDBG 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 of Lobbying Activities) 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 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. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance.

9. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so the parties hereto are formally bound to the provisions of this Agreement.

10. Entire Agreement; Modification. This Agreement contains the entire agreement of the parties and supersedes all other prior negotiations, understandings or agreements. This Agreement may be modified only upon mutual written agreement of the parties, except that CITY may amend this Agreement as necessary to conform with federal, state or local governmental regulations, guidelines or policies.

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

CITY OF COSTA MESA
A California municipal corporation

Mayor

ATTEST:

Brenda Green 8/23/16
City Clerk

Economic and Development Services Director

APPROVED AS TO FORM:

City Attorney

Stephen Dunnicent
Interim Finance Director

SUBRECIPIENT

President & CEO
Title

8/4/16
Date

Board Chair
Title

8/4/16
Date

ATTACHMENT 1

SCOPE OF WORK

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 funded program during the 12-month FY 16/17 contract period (*regardless of community of residence*) = 27,407 **INDIVIDUALS**

B. Number of unduplicated low and moderate-income **Costa Mesa** residents to be served with grant funds during the 12-month FY 16/17 contract period = **40 INDIVIDUALS**

C. Of the Costa Mesa residents to be assisted:

- How many will have new or continued access to this service or benefit? 40 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: 40 INDIVIDUALS

II. ***Schedule of Performance:*** Estimate the number of **unduplicated Costa Mesa** residents to be served during the 12-month FY 16/17 contract period per quarter:

Quarter 1: July 1 – September 30	10 INDIVIDUALS
Quarter 2: October 1 – December 31	10 INDIVIDUALS
Quarter 3: January 1 – March 31	10 INDIVIDUALS
Quarter 4: April 1 – June 30	10 INDIVIDUALS
Total	**40 INDIVIDUALS**

III. ***Invoicing Schedule:*** Estimate the amount of grant funds to be requested during the 12-month FY 16/17 contract period on a quarterly basis:

Quarter 1: July 1 – September 30	$3,625.00
Quarter 2: October 1 – December 31	$3,625.00
Quarter 3: January 1 – March 31	$3,625.00
Quarter 4: April 1 – June 30	$3,625.00
Total	**$14,500.00**

IV. *Outcome Measurements for FY 2016/2017*

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.	The effectiveness of the program is measured by outcomes found on the lower portion of the Intake Form. Ombudsmen evaluate whether their actions had a "Positive Impact" or "unable to Impact in one of seven catagories. The Outcome areas are 1) Quality of Life, 2)Appropriate Placement, 3)Physical Environment 4)Quality of Care, 5)Financial Issues, 6) Privacy Rights, 7) End of Life Issues.

V. ***Description of Work:*** In space below, summarize the program to be funded during the 12-month FY 16/17 contract period. Include services to be provided, program goals & how grant funds will be used.

The Long-Term Care Ombudsman Program is a state & 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 make regular unannounced visits to licensed nursing homes and residential care facilities. 60% of complaints received are submitted during a regular Ombudsman visit. This means visiting often & maintaining 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 to maintain and/or improve quality of life. This is accomplished through advocacy, mediation, complaint investigation, complaint resolution and, if indicated, appropriate referrals.

MISSION: The Ombudsman mission is to promote the independence, health & dignity of older adults through compassion, education & advocacy.

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 & disabled residents. The program is state & federally mandated, thus receives state & federal funding. This enables the program to operate at marginal levels. Facilities located in cities that supplement the 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 over 750 elderly residents living in the 45 long-term care facilities located in the City of Costa Mesa.

VI. FY 2016-2017 Program Budget

BUDGET CATEGORY	PROPOSED USE OF CDBG FUNDS	PROPOSED USE OF OTHER PROGRAM FUNDS	TOTAL PROGRAM COSTS
Agency Administration Staff Salaries & Benefits	$	$94,000	$94,000
Program Staff Salaries & Benefits	$14,500	$562,303	$576,803
Program Supplies	$	$19,400	$9,400
Rent/Lease	$	$35,000	$35,000
Communications	$	$5,200	$5,200
Utilities	$	$0	$0
Professional Services (Specify) Training/Conferences	$	$3,000	$3,000
Insurance	$	$3,400	$3,4000
Other (Specify) IT support/ Audit	$	$7,500	$7,500
Other (Specify) Mileage reimbursement	$	$14,000	$14,000
Other (Specify) telephone	$	$17,454	$17,454
Other (Specify)	$	$	$
TOTAL	**$14,500**	*** $761,257**	**$775,757**

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

SOURCE OF OTHER PROGRAM REVENUE	AMOUNT OF OTHER PROGRAM FUNDS
other cities CDBG	$87,000
Office on Aging	$665,585
Community Foundation grant	$23,172
Costa Mesa facilities represent 2% of all lOrange County facilities ; 2% of Program Funds assist Costa Mesa residents	$
(Includes non-resident budget expenses)	$
TOTAL	*** $775,757**

*** 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. FY 2016-2017 CDBG Funded Personnel - ONLY list personnel that will be paid with CDBG funds and that have been listed as part of the 16/17 Program Budget.

☐ CHECK IF 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
	$	$	$	$	%
	$	$	$	$	%
	$	$	$	$	%
	$	$	$	$	%
	$	$	$	$	%

PROPOSED PROGRAM STAFF

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	$17,140	$1,740	$18,854	$15,000	100%
(Resident Advocate)	$	$	$	$	%
	$	$	$	$	%
	$	$	$	$	%
	$	$	$	$	%

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
	$	$	$	$	%
	$	$	$	$	%
	$	$	$	$	%

ATTACHMENT 2

COUNCIL POLICY NO. 100-5

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.