

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

SUMMARY PAGE

Grant Type: HOPWA Homeless Contract No.: HOP-19-001

Agency:

DEPARTMENT OF COMMUNITY SERVICES AND WORKFORCE DEVELOPMENT OF THE COUNTY OF SAN BENITO
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Project:

Housing Opportunities for Persons With AIDS

Description:

Housing Opportunities for Persons With AIDS (HOPWA) funds will be used to provide direct participant services such as rental subsidies, utilities assistance, nutritional supplementation, and dental assistance. Other services may include advocacy, housing information and resource identification. Eligibility criteria consists of an HIV/AIDS positive status, an intake procedure, and declared need for assistance.
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Funding Source: HOPWA

Grant Award Not to Exceed: \$ 150,000

Payment Terms: See EXHIBIT D

Agreement Term: Start Date: 07/01/2019 End Date: 06/30/2022

PARTIES TO AGREEMENT:

GRANTEE		CITY OF SAN JOSE
Agency Name:	Department of Community Services and Workforce Development of the County of San Benito	Housing Department
Address for Legal Notice:	1111 San Felipe Road, Suite #108	200 E. Santa Clara St., 12 th Floor
City/State/Zip Code:	Hollister, CA 95023	San Jose, CA 95113-1907
Attention:	Enrique Arreola, Deputy Director	Jacky Morales-Ferrand, Director
Email Address:	earreola@cosb.us	Jacky.morales-ferrand@sanjoseca.gov

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Telephone No.:	831-637-9293	408-535-3860
Taxpayer ID	94-60000530	
DUNS No.:	784683757	
Type of Entity:	County Government	
State of Incorporation or Residency:	California	

CONTACT INFORMATION

GRANTEE Contract Manager:	Enrique Aerreola
Title:	Deputy Director
Telephone No:	831-637-9293
Email:	earreola@cosb.us
CITY Contact Person:	April Ensign
Title:	Grant Analyst
Telephone No:	408-975-4420
Email:	april.ensign@sanjoseca.gov

EXHIBIT LIST

YES N/A

- ☒ ☐ Exhibit A: Scope of Services
☒ ☐ Exhibit B: Performance Measures/Numeric Goals
☒ ☐ Exhibit C: Budget
☒ ☐ Exhibit D: Schedule of Payments ☒ ☐ Exhibit E: General I Grant

Conditions

To the extent applicable, the following grant provisions are required for this AGREEMENT. (Check all provisions that apply.)

YES N/A REQUIRED LANGUAGE ATTACHMENT

- ☐ ☐ City of San Jose Funding
☒ ☐ Federal
☐ ☐ State
☐ ☐ County
☐ ☐ Other Public Agency
☐ ☐ Private Funding Agency

- ☒ ☐ Exhibit F: Employee/Volunteer Clearance Verification and Compliance with the Child Abuse and Neglect Reporting Act
☒ ☐ Exhibit G: Insurance
☒ ☐ Exhibit H: Guidelines For Minority-Owned and Women-Owned Business Enterprises (MBE/WBE)

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Revised Exhibit I: Retroactive Services

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I certify that I have read and hereby consent to all the terms and provisions contained in the attached AGREEMENT, including without limitation, all exhibits. Said AGREEMENT is hereby incorporated.

WITNESS THE EXECUTION HEREOF upon execution by CITY.

THE COUNTY OF SAN BENITO, a political subdivision of the State of California

Grantee Signature:

Date:

Print Name:

Title:

_____	_____
_____	_____
_____	_____
_____	_____

APPROVED AS TO LEGAL FORM
SAN BENITO COUNTY COUNSEL

 6-26-2019
DEPUTY COUNTY COUNSEL DATE

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CITY OF SAN JOSE, a municipal corporation of the State of California

JACKY MORALES-
FERRAND, Director
Housing Department

Date: _____

Approved as to form:
HANA HARDY
Deputy City Attorney

Date: _____



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CITY OF SAN JOSE HOUSING DEPARTMENT HOPWA GRANT AGREEMENT
(Housing Opportunities For Persons With AIDS (HOPWA) – San Benito County)

This HOPWA GRANT AGREEMENT FOR SAN BENITO COUNTY ("AGREEMENT") is made and entered into upon execution by CITY, by and between the CITY OF SAN JOSE, a municipal corporation of the State of California (hereinafter referred to as "CITY"), and the County of San Benito, a political subdivision of the State of California ("GRANTEE"). For purposes of this AGREEMENT, CITY and GRANTEE are sometimes collectively referred to as "Parties" and individually as "Party".

RECITALS

WHEREAS, CITY has received Housing Opportunities for Persons with AIDS (HOPWA) funds from HUD as an entitlement-city pursuant to Section 101(g), Public Law 99-500, as amended. CITY desires to engage GRANTEE who has been allocated a portion of CITY's said funds, to be utilized during the time period as set forth in this Agreement; and

WHEREAS, the Federal Department of Housing and Urban Development ("HUD") has awarded \$1,131,945.00 in HOPWA program (CFDA # 14.241) funding to the CITY subject to the execution of Grant Agreement CAH19-F004 between the CITY and HUD, which will occur at a later time than the execution of this AGREEMENT (CAH19-F004 Execution Date: _____). This award is not for research and development purposes and includes a CITY administrative indirect cost rate capped at 3% of the total grant award per HUD guidelines; and

WHEREAS, the CITY, as the pass-through entity, has obligated and committed an amount \$150,000 of HOPWA funding to GRANTEE in this AGREEMENT. The CITY has obligated and committed a total amount of \$150,000 of Federal Funding to GRANTEE for Fiscal Year 2019-2020; and

WHEREAS, CITY desires to grant \$150,000 in federal Housing Opportunities For Persons With AIDS ("HOPWA") funds for services to be provided by GRANTEE to support GRANTEE's countywide HOPWA program ("Program") from July 1, 2019 to June 30, 2022; and

WHEREAS, GRANTEE has the necessary professional expertise and skill to perform such services; and

WHEREAS, it is understood and agreed that GRANTEE has commenced work and incurred costs prior to execution of this AGREEMENT in anticipation of its execution; and

WHEREAS, CITY agrees to reimburse GRANTEE for those costs in accordance with the terms of this AGREEMENT. However, in no event shall GRANTEE be reimbursed for costs incurred prior to July 1, 2019;

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NOW, THEREFORE, the purpose of this AGREEMENT is to retain GRANTEE to perform those services specified in EXHIBIT A of this AGREEMENT titled "Scope of Services" as follows:

SECTION 1: PROGRAM COORDINATION

A. CITY: The Director of the Department, now Jacky Morales-Ferrand, as also identified on the Summary Pages under City of San José (hereinafter "DIRECTOR"), or his or her designee, shall be the CITY official responsible for the Program and shall render overall supervision of the progress and performance of this AGREEMENT by CITY. All services agreed to be performed by CITY shall be under the overall direction of the DIRECTOR.

B. GRANTEE: GRANTEE shall identify a single project director, now Enrique Arreola, as also identified on the Summary Pages, who shall have overall responsibility for the progress and execution of this AGREEMENT ("GRANTEE Contract Manager"). Additionally, GRANTEE shall immediately notify CITY in writing should circumstances or conditions subsequent to the execution of this AGREEMENT require a substitute GRANTEE CONTRACT MANAGER. GRANTEE's Contract Manager and GRANTEE staff will fully cooperate with the DIRECTOR relating to the work or services provided hereunder.

SECTION 2: TERM OF AGREEMENT AND GRANT AWARD

A. The term of this AGREEMENT ("Term") shall commence on July 1, 2019 (the "Start Date"), as also set forth in the Summary Pages, and shall expire on June 30, 2022 (the "End Date"), as also set forth in the Summary Pages, unless extended or sooner terminated in accordance with the terms of this AGREEMENT. Regardless of the date of execution of this AGREEMENT, this AGREEMENT is effective as of the Start Date.

B. If this AGREEMENT is extended, a request to extend this AGREEMENT along with a description of the revised Scope of Services (EXHIBIT A) documents should be submitted by GRANTEE to the CITY no less than forty-five (45) days prior to the expiration date. An extension must be set forth in a written amendment to this AGREEMENT, signed by authorized representatives of CITY and GRANTEE. Nothing herein commits or binds the CITY to extend this AGREEMENT which shall be at the sole discretion of CITY, and if additional funds are required, shall be subject to appropriation of funds by City Council.

SECTION 3: GRANT SERVICES

GRANTEE shall perform those services as specified in detail on EXHIBIT A titled "Scope of Services" ("Grant Services") and shall comply with the terms and conditions of this AGREEMENT.

SECTION 4: PAYMENTS

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A. CITY agrees to pay GRANTEE ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000) in HOPWA funds for a total amount not to exceed \$150,000, as also set forth on the Summary Pages ("Grant Award"), for the services described in EXHIBIT A titled "Scope of Services", and which payment is subject to the terms and conditions set forth in EXHIBIT D titled "Schedule of Payments." Any costs incurred by GRANTEE above the Grant Award shall be at GRANTEE's sole cost and expense.

B. GRANTEE will provide CITY with invoices or financial reports signed by the GRANTEE CONTRACT MANAGER or other authorized agency representative with authority to confirm the accuracy of reported expenditures on a form approved by the CITY, with applicable invoices and/or financial reports in sufficient detail to determine actual costs incurred, hours services provided and any indirect, overhead or administrative costs charged to the CITY.

C. CITY will review invoices or financial reports for adherence to AGREEMENT requirements and services, and authorize and release payment to GRANTEE based upon claims submitted and within thirty (30) calendar days from receipt of invoice or financial reports and complete supporting documentation, provided that GRANTEE is not in default under any provisions of this AGREEMENT.

D. CITY will not pay for unauthorized services rendered by GRANTEE or for claimed services which GRANTEE has not provided as required by this AGREEMENT. GRANTEE shall in no event be reimbursed for costs incurred prior to July 1, 2019.

E. DIRECTOR or his or her designee may, without prior notice to GRANTEE, at any time in his or her absolute discretion, elect to suspend or terminate payment to GRANTEE, in whole or in part, terminate work or expenditures by GRANTEE under this AGREEMENT, or not to make any particular payment under this AGREEMENT or take any other action available in the event of any of the following occurrences:

1. If GRANTEE (with or without knowledge) shall have made any material misrepresentation of any nature with respect to any information or statements furnished to CITY in connection with this AGREEMENT;
2. If there is pending litigation with respect to the performance by GRANTEE of any of its duties or obligations under this AGREEMENT which may materially jeopardize or adversely affect the undertaking of or the carrying out of the Grant Services;
3. If GRANTEE, without having obtained CITY approval, has taken any action pertaining to the Grant Services which requires CITY approval;
4. If GRANTEE makes improper use of the Grant Award;

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5. If GRANTEE fails to comply with any of the terms and conditions of this AGREEMENT including without limitation, GRANTEE's failure to carry out the Grant Services or other obligations as described in any Exhibit to this AGREEMENT; or
6. If GRANTEE submits to CITY any report which is incorrect or incomplete in any material respect, or is untimely.

SECTION 5: DEFAULT AND TERMINATION OF AGREEMENT

A. CITY may, through DIRECTOR, terminate this AGREEMENT without cause by giving GRANTEE thirty (30) calendar days written notice.

B. Each of GRANTEE's obligations under this AGREEMENT shall be deemed material. If GRANTEE fails to perform any of its obligations under this AGREEMENT, or any other AGREEMENT with the CITY, CITY may terminate this AGREEMENT upon ten (10) days advance notice ("Notice Period") to GRANTEE, specifying GRANTEE's breach and providing GRANTEE with the opportunity to cure the specified breach within the Notice Period or in those instances where the specified breach cannot reasonably be cured within the Notice Period, the opportunity to commence to cure the specified breach. In the event GRANTEE fails to cure or to commence to cure the specified breach within the Notice Period, this AGREEMENT shall be terminated. Without limiting the generality of the foregoing, the occurrence of any one of the following events shall constitute a default of this AGREEMENT for which CITY may exercise its right of termination:

1. GRANTEE's breach of any of the representations or warranties contained in this AGREEMENT;
2. The occurrence of any of the events set forth in SECTION 4 for suspension or termination of CITY's payment of the Grant Award.

C. In the event of termination under this SECTION, GRANTEE shall have the following obligations:

1. No later than thirty (30) days following the date of termination GRANTEE shall refund to CITY any unused portion of the Grant Award, except that GRANTEE shall have no obligation to refund to CITY any portion of the Grant Award that was distributed in accordance with the terms of the AGREEMENT. GRANTEE shall also provide CITY with a written report detailing the expenditures, if any, from the Grant Award, including an accounting of its administrative expenses to the date of termination. GRANTEE shall refund to CITY any portion of the Grant Award designated for GRANTEE's administrative expenses which was not expended as of the date of termination. Nothing in this AGREEMENT shall be deemed to be a waiver of CITY's right to recover from GRANTEE any portion of the Grant Award that has not been spent in accordance with this AGREEMENT. Upon receipt,

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GRANTEE will be paid for services performed and reimbursable expenses incurred in compliance with the terms of this AGREEMENT to date of termination, unless other payment terms are explicitly provided in **EXHIBIT D**.

2. Upon termination, GRANTEE shall immediately deliver to CITY any and all copies of materials used or developed for this grant including, but not limited to, all data collection forms, reports, studies and other work performed, whether or not completed by GRANTEE or GRANTEE's subcontractor, if any, under this AGREEMENT.

D. Nothing in this AGREEMENT shall be construed so as to deprive CITY of its rights and remedies at law or in equity against GRANTEE.

E. DIRECTOR is authorized to terminate this AGREEMENT on CITY's behalf.

F. If the term of this AGREEMENT is more than one (1) year, the funding in any year after the first year may be contingent upon past and pending performance as well as future appropriation by the City Council of the City of San José, in its sole discretion. If the funding required to pay for Grant Services for the next fiscal year has not been appropriated by June 30 of any year, this AGREEMENT will automatically terminate, effective June 30.

G. CITY may, at its sole option, pursue a course correction process with GRANTEE to address issues with GRANTEE's performance under this AGREEMENT. However, CITY is under no obligation to pursue a course correction prior to exercising its rights to suspend payment to GRANTEE or to terminate this AGREEMENT.

SECTION 6: ACCOUNTING AND FINANCIAL RECORDS.

GRANTEE shall establish and maintain at all times, on a current basis in connection with the provision of Program, an adequate accounting system in accordance with generally accepted accounting principles and standards and acceptable to DIRECTOR covering all revenues, costs, and expenditures with respect to GRANTEE's performance under this AGREEMENT.

GRANTEE shall maintain its accounting system and shall provide CITY with reports that separate costs and expenses incurred by GRANTEE with CITY funds as distinguished from costs and expenses paid for from other funding sources.

SECTION 7: REPORTING REQUIREMENTS.

GRANTEE shall submit reports related to GRANTEE's performance under this AGREEMENT prepared in accordance with **EXHIBIT B** and, to the extent applicable, on the schedule specified in **EXHIBIT D**. The format of the reports shall be as provided in this AGREEMENT unless otherwise directed by the DIRECTOR. A final report shall be delivered to CITY prior to expiration of this AGREEMENT, as may be further described in **EXHIBIT B**.

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SECTION 8: RIGHT OF EXAMINATION AND AUDIT AND PRESERVATION OF RECORDS.

GRANTEE agrees that the CITY's Manager, Auditor, Attorney or the Director, or any of their duly authorized representatives, shall have access to and the right to examine all facilities and activities of GRANTEE related to GRANTEE's performance of this AGREEMENT, including the right to audit, conduct further financial review, examine and make excerpts or transcripts of all contracts, subcontracts, invoices, payroll records, personnel records, and all other data or financial records relating to matters covered by this AGREEMENT at any time during the term of this AGREEMENT. GRANTEE shall cooperate with CITY in such audit, examination, further review and shall provide CITY with access to GRANTEE's staff and to all relevant records, documents, and data, including but not limited to, management letters, board minutes, and payroll.

EXHIBIT B, titled "PERFORMANCE MEASURES/NUMERIC GOALS" may set forth additional standards regarding the CITY's right to audit, and GRANTEE's obligation to deliver to the CITY reports which may include audited financial reports.

SECTION 9: CITY ACKNOWLEDGMENT

GRANTEE shall acknowledge the support of CITY, where appropriate, in written documents and informational materials regarding Grant Services, the Grant Award, the Grant Program or this AGREEMENT.

SECTION 10: INSURANCE

GRANTEE agrees to have the policies set forth in the attached **EXHIBIT G**, titled "INSURANCE" not later than the date of execution of this AGREEMENT and to maintain such policies throughout the term of this AGREEMENT. All policies, endorsements, certificates and/or binders shall be subject to approval by the Risk Manager of the City of San Jose as to form and content. These requirements may not be amended or waived unless approved in writing by the Risk Manager. GRANTEE agrees to provide CITY with a copy of said policies, certificates and/or endorsements upon execution of this AGREEMENT.

SECTION 11: INDEMNIFICATION AND HOLD HARMLESS

A. GRANTEE agrees to defend, indemnify and hold harmless the CITY from and against any and all claims, demands, causes of action, or liabilities incurred by CITY arising from, in whole or in part, directly or indirectly, GRANTEE's acts or omissions under this AGREEMENT, except as may be caused by the sole, active negligence or willful misconduct of CITY. In any action or claim against CITY in which GRANTEE is defending CITY, CITY shall have the right to approve legal counsel providing CITY's defense and such approval shall not be unreasonably withheld. GRANTEE further agrees to release CITY from any and all claims for any damages, including property damage, injury or death occurring or arising out of use of CITY's property,

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except as may be caused by the CITY's sole, active negligence or willful misconduct.

B. The GRANTEE's obligations under this indemnification provision shall survive the expiration or termination of this AGREEMENT.

SECTION 12: NOTICES

A. Any communication or notice to either Party shall be in writing and shall be either personally delivered or mailed in the United States mail, postage prepaid, or by facsimile, or electronic mail, to the respective parties addressed as referenced on the Summary Page of this AGREEMENT.

B. Either Party may change its address by sending written notice of the new address to the other Party pursuant to this Section 12.

SECTION 13: AMENDMENTS

Unless otherwise authorized by this AGREEMENT, amendments to the terms and conditions of this AGREEMENT and any such adjustment to this AGREEMENT shall be effective only upon the mutual AGREEMENT in writing of the authorized representatives of the Parties.

SECTION 14: COMPLIANCE WITH LAWS/NONDISCRIMINATION

A. GRANTEE shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments and with applicable CITY policies.

B. GRANTEE shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, actual or perceived gender identity, sexual orientation, disability, ethnic or national origin pursuant to anti-discrimination laws, including Title VI of the Civil Rights Act of 1964 and the Fair Housing Act, Section 109 of the Housing and Community Development Act of 1974, and Section 504 of the Rehabilitation Act of 1973, and in connection with or related to the performance of this AGREEMENT.

C. GRANTEE shall fully implement and comply with its CITY-approved Language Access Plan to ensure that Limited English Proficient clients have equal access to community programs and services.

D. GRANTEE shall include in all outreach and marketing materials, including public websites, an affirmative statement that they will provide services or benefits to all persons, including persons of the following protected categories: race, sex, color, age, religion, actual or perceived gender identity, sexual orientation, disability, ethnic or national origin, or familial status. Should the organization not comply with this requirement, the CITY will withhold any and all federal funding until such time as the organization is in compliance.

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E. GRANTEE will also obtain and maintain all licenses and permits appropriate to its proper and effective performance of this AGREEMENT prior to the date of commencement, including, but not limited to a City of San José business tax certificate or exemption, if applicable, with the CITY's Finance Department to operate in the CITY. GRANTEE is responsible for contacting the appropriate offices and filing the necessary documents to comply with these requirements.

SECTION 15: RELATIONSHIP OF PARTIES

A. It is understood and agreed by and between the Parties that GRANTEE in the performance of this AGREEMENT, shall not act nor is it at any time authorized to act, as the agent or representative of CITY in any matter. GRANTEE further agrees that it will not in any manner hold itself out as the agent or representative of CITY or act in such a fashion as would give the impression to a reasonable person that GRANTEE is acting in such a capacity.

B. The Parties agree that GRANTEE and GRANTEE's employees shall be at all times independent contractors and not agents or employees of the CITY, and that GRANTEE and GRANTEE's employees shall not be entitled to any salary, fringe benefits, pension, Workers' Compensation, sick leave, insurance or any other benefit or right connected with employment by the City of San José, or any compensation other than as prescribed herein, and GRANTEE and GRANTEE's employees expressly waive any claim it/they may have to any such rights.

C. Under no circumstances shall this AGREEMENT be construed as one of partnership, joint venture, or employment between GRANTEE and CITY. Each Party acknowledges and agrees that it neither has, nor will give the appearance or impression of having, any legal authority to bind or commit the other Party in any way.

SECTION 16: WAIVER

A. In no event shall any payment by CITY or any acceptance of payment by GRANTEE hereunder constitute or be construed to be a waiver by CITY or GRANTEE of any breach of covenants or conditions of this AGREEMENT or any default which may then exist on the part of CITY or GRANTEE, and the making of any such payment or the acceptance of any such payment while any such breach or default exists, shall in no way impair or prejudice any right or remedy available to CITY or GRANTEE with respect to such breach or default.

B. The waiver by any Party to this AGREEMENT of a breach of any provision of this AGREEMENT shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of this AGREEMENT.

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SECTION 17: CORPORATE AUTHORITY/AUTHORIZED REPRESENTATIVES

GRANTEE represents and warrants that it has the authority to enter into this AGREEMENT. GRANTEE further represents and warrants that its signatory to this AGREEMENT is authorized to execute this AGREEMENT on GRANTEE's behalf.

SECTION 18: INTEGRATED DOCUMENT

This AGREEMENT, including the Summary Pages and any Exhibits, are incorporated herein and embody the entire AGREEMENT between CITY and GRANTEE. No oral agreements or conversations with any officer, agent or employee of CITY shall affect or modify any of the terms or obligations contained in any documents comprising this AGREEMENT. Any such oral agreement shall be considered as unofficial information and in no way binding upon CITY.

SECTION 19: SEVERABILITY OF PROVISIONS

If any part of this AGREEMENT is for any reason found to be unenforceable by a court of competent jurisdiction, all other parts nevertheless remain enforceable. CITY and GRANTEE agree that to the extent that the exclusion of any unenforceable provisions from this AGREEMENT affects the purpose of this AGREEMENT, then the Parties shall negotiate an adjustment to this AGREEMENT in order to give full effect to the purpose of this AGREEMENT or either Party may terminate this AGREEMENT. In the event of termination, the provisions of SECTION 5 as related to repayment of the Grant Award shall apply.

SECTION 20: VENUE

The Parties agree that this AGREEMENT shall be governed and construed in accordance with the laws of the State of California. In the event that suit shall be brought by either Party to this AGREEMENT, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San José, California.

SECTION 21: CONFLICT OF INTEREST

GRANTEE shall comply with the applicable provisions of the Political Reform Act of 1974, as amended, relating to conflicts of interest (codified in California Government Code Section 87000, *et seq.*), with the conflict of interest provisions of Government Code Section 1090 *et seq.* and with the CITY's Code of Ethics, set forth in City Council policy 0-15. GRANTEE shall promptly advise CITY of the facts and circumstances concerning any disclosure made to it or any information obtained by it relating to conflicts of interest.

SECTION 22: RELIGIOUS/POLITICAL ACTIVITIES

A. GRANTEE shall not expend any portion of the Grant Award to inhibit or promote religion and the Grant Services funded by the Grant Award must not be used to convey a religious

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message. Any portion of the Grant Award used in contradiction to the provisions of this Section 22, shall be deemed a disallowed cost.

B. GRANTEE shall not expend any portion of the Grant Award for political advocacy efforts, whether for or against a political candidate, ballot measure or bill.

SECTION 23: ASSIGNABILITY

The Parties agree that the expertise and experience of GRANTEE are material considerations for this AGREEMENT. Unless specifically authorized by this AGREEMENT, GRANTEE may not assign the performance of any obligation or interest under this AGREEMENT, including subcontracting, without the prior written consent of CITY. Any attempt by GRANTEE to assign this AGREEMENT, in violation of this Section 23, will be voidable at CITY's sole option.

SECTION 24: SUBCONTRACTS

A. No subcontract will alter in any way any legal responsibility of GRANTEE to provide services under this AGREEMENT.

B. GRANTEE will monitor the subcontractor to ensure compliance with the terms and conditions of this AGREEMENT and provide records of their compliance as requested.

C. GRANTEE assures that the subcontractor(s) maintain(s) current licensure and indemnity insurance appropriate for obligations undertaken by subcontractor(s) and provides copies of such to CITY.

D. GRANTEE will provide CITY with records of reimbursement to subcontractor(s) for obligations incurred under subcontract.

E. CITY has the right to refuse reimbursement for obligations incurred under any subcontract that does not comply with the terms of this AGREEMENT.

SECTION 25: EMPLOYEES/VOLUNTEERS

A. Any and all personnel employed or volunteers retained by GRANTEE in conducting the operations of GRANTEE's program shall be qualified to perform the duties assigned to them by GRANTEE.

B. GRANTEE shall not hire employees or volunteers who will have supervisory or disciplinary authority over minors who have been convicted of any offense identified in California Public Resources Code Sections 5164. GRANTEE shall fully indemnify, defend, and hold harmless CITY for any such hiring. GRANTEE shall notify CITY in writing of any violation of this provision as soon as is reasonably practicable.

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C. GRANTEE shall also not employ any person who is permitted to provide services requiring contact with children or providing food concessionaire services or other licensed concessionaire services in that area, unless GRANTEE has complied with the tuberculosis (TB) testing requirements set forth in Section 5163 of the California Public Resources Code.

D. Regardless of whether services have been provided prior to full execution of this AGREEMENT, GRANTEE certifies to the CITY that all services were provided in full compliance with the terms and provisions of this AGREEMENT.

E. To give effect to California Public Resources Code Sections 5163 and 5164, GRANTEE shall follow the procedures contained in **EXHIBIT F** attached hereto. In the event GRANTEE chooses a different national criminal database for complying with the Federal Bureau of Investigation (FBI) requirement for background checks, then such alternative database shall be subject to the CITY's prior written approval.

SECTION 26: CONTRACTOR'S FINANCIALS.

A. City Council requires that each non-profit organization receiving Two Hundred Ninety Thousand Dollars (\$290,000) or more in funds from the CITY or the Successor Agency to the Redevelopment Agency for the City of San José ("Successor Agency") (in the aggregate) during any fiscal year which is either (i) grant funding other than construction funding and/or (ii) operating subsidy funding for operation of CITY facilities, must prepare and make available for public view on the internet, annual audited financial statements. The audited financial statements must be made available for view within one hundred fifty (150) days from the end of the non-profit's fiscal year (which period may be extended by the CITY's Manager based upon a showing of hardship or other good cause) and must be submitted to the CITY's Housing Department and posted at the GRANTEE's website at an easy access location. All audits must be performed by a certified public accountant currently licensed to practice in the State of California, must conform to generally accepted auditing standards and otherwise be in a form acceptable to the CITY.

B. Non-profits shall be required to comply with this requirement at the time that the non-profit has entered into one or more grant agreements or subsidy agreements with the CITY and/or Successor Agency, which provide for the payment of an aggregate amount that equals or exceeds Two Hundred Ninety Thousand Dollars (\$290,000) in grant and/or subsidy funds in any one fiscal year. Non-profits covered by this requirement must exert due diligence in determining when they have reached the aggregate funding threshold of Two Hundred Ninety Thousand Dollars (\$290,000). The provisions of the financial posting requirements shall be interpreted broadly to effectuate the purpose of making available to the public information on recipients of substantial CITY and/or Successor Agency funds. These provisions shall apply not only to grant agreements or operating agreements but shall also apply, without limitation, if any amendments to such agreements brings the total annual funding to equal or exceed Two Hundred Ninety Thousand Dollars (\$290,000), and also to any other agreements with the CITY and/or Successor Agency that are equivalent in purpose to a grant agreement or an operating subsidy agreement, regardless of the title of the agreement.

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C. This posting requirement shall remain in effect until an entire fiscal year passes in which the non-profit does not have contracts with the CITY and/or Successor Agency which provide for grants and/or subsidies from the CITY and/or Successor Agency in an aggregate amount equaling or exceeding Two Hundred Ninety Thousand Dollars (\$290,000). Without limitation of any other remedy, GRANTEE's failure to comply with this requirement may be taken into consideration when evaluating GRANTEE's request for future grant funds or subsidies.

SECTION 27: ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY

A. GRANTEE agrees that, in the performance of this AGREEMENT, GRANTEE shall perform its obligations under the agreement in conformance with City Council Policy 4-6, Environmentally Preferable Procurement Policy. A description for environmentally preferable procurement and the policy can be found on the CITY's website at the following link:

<http://www.sanjoseca.gov/index.aspx?nid=1774>

B. Environmental procurement policies and activities related to the completion of work will include wherever practicable, but are not limited to:

1. Use of recycled and/or recyclable products in daily operations. (i.e. 30, 50, 100% PCW paper, chlorine process free; triclosan free hand cleaner, etc.)
2. Use of Energy Star Compliant equipment.
3. Vehicles and vehicle operations (i.e. Alternative Fuel, Hybrid, etc.)
4. Internal waste reduction and reuse protocol(s).
5. Water and resource conservation activities within facilities, including bans on individual serving bottled water and the use of compostable food service products, etc.

SECTION 28: GIFTS

A. GRANTEE is familiar with CITY's prohibition against the acceptance of any gift by a CITY officer or designated employee, which prohibition is found in Chapter 12.08 of the San José Municipal Code.

B. GRANTEE agrees not to offer any CITY officer or designated employee any gift prohibited by said Chapter.

C. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this AGREEMENT by GRANTEE. In addition to any other remedies CITY may have in law or equity, CITY may terminate this AGREEMENT for such breach as provided in SECTION 4 of this AGREEMENT.

SECTION 29: DISQUALIFICATION OF FORMER EMPLOYEES

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

GRANTEE is familiar with the provisions relating to the disqualification of former officers and employees of CITY in matters which are connected with former duties or official responsibilities as set forth in Chapter 12.10 of the San José Municipal Code ("Revolving Door Ordinance"). GRANTEE shall not utilize either directly or indirectly any officer, employee or agent of GRANTEE to perform services under this AGREEMENT, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

SECTION 30: MISCELLANEOUS

- A. The headings of the sections and subsections of this AGREEMENT are inserted for convenience only.
- B. Where this AGREEMENT refers to CITY and no officer of the CITY is named, CITY's Manager shall have the authority to act on CITY's behalf.
- C. This AGREEMENT may be executed in any number of separate counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.
- D. In the spirit of cooperation, CITY requests that GRANTEE undertake good faith efforts to assist CITY with the 2020 Census. Such efforts may include, but are not limited to, distributing marketing materials developed by the United States Census, CITY or County of Santa Clara to members of the community that GRANTEE provides services to, especially in hard to count census tracts as identified by the U.S. Census or the CITY, as well as providing awareness of and encouraging participation in the Census through GRANTEE's normal service delivery with special events, workshops, and other community activities, and through communication channels such as e-mail blasts, website, newsletters and social media.