

**CITY OF SAN JOSE  
AGREEMENT**

**SUMMARY PAGE**

This GRANT AGREEMENT is entered into this 8th day of February, 2022, by the **CITY OF SAN JOSE** ("City"), a municipal corporation, and the **EAST SIDE UNION HIGH SCHOOL DISTRICT** ("GRANTEE").

Department: Parks, Recreation and Neighborhood Services  
 Dept. Contract No.: 646959

Agency: East Side Union High School District (ESUHSD)

Project: Overfelt High School Summer Recreation

Description: This grant will reimburse GRANTEE for Overfelt Pool operations and drop-in youth services at Overfelt High School.

Funding Source: General Fund

Contract Amount Not to Exceed: \$ 100,000 ONE HUNDRED THOUSAND DOLLARS

Payment Terms: See **EXHIBIT C**

Agreement Term: Start Date: July 1, 2021 End Date: June 30, 2022

**PARTIES TO AGREEMENT:**

	<b>GRANTEE</b>	<b>CITY OF SAN JOSE</b>
Agency Name:	East Side Union High School District	Department of Parks, Recreation and Neighborhood Services
Address for Legal Notice:	830 North Capitol Avenue	200 East Santa Clara Street, 9 <sup>th</sup> Floor
City/State/Zip Code:	San José, CA 95133	San José, CA 95113
Attention:	Glenn Vander, Superintendent	Jon Cicirelli, Director
E-mail Address:	<a href="mailto:VanderG@esuhd.org">VanderG@esuhd.org</a>	<a href="mailto:Jon.Cicirelli@sanjoseca.gov">Jon.Cicirelli@sanjoseca.gov</a>
Telephone No.:	(408) 347-5010	(408) 535-3570

Taxpayer ID:	94-2864814	
City Business License/ Tax No.:	N/A	
Type of Entity:	Political subdivision of the State of California	
State of Incorporation or Residency	California	

**CONTACT INFORMATION**

GRANTEE Contact Person:	Andre Bell
Title:	Contract Administration Coordinator
Telephone No:	408-347-5070
Email:	<a href="mailto:Bella@esuhsd.org">Bella@esuhsd.org</a>

CITY Contact Person:	Clarissa Michel
Title:	Analyst
Telephone No:	408-793-5544
Email:	<a href="mailto:Clarissa.Michel@sanjoseca.gov">Clarissa.Michel@sanjoseca.gov</a>

**EXHIBIT LIST**

**YES    N/A**

- Exhibit A: Scope of Services and Units of Service
  - Exhibit B: Budget Summary
  - Exhibit C: Payments to GRANTEE and Reporting Schedule
  - Exhibit D: Monitoring, Evaluation, and Reporting Requirements
  - Exhibit E: General Service Requirements (Special Grant Conditions)
- To the extent applicable, the following grant provisions are required for this AGREEMENT. (Check all provisions that apply.)

**YES    N/A**

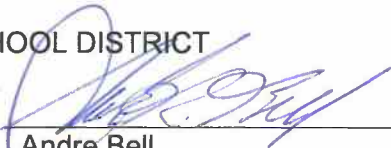
- City of San José Funding
  - Federal
  - State
  - County
  - Other Public Agency
  - Private Funding Agency
- Exhibit F: Employee/Volunteer Clearance Verification and Compliance with the Child Abuse and Neglect Reporting Act
  - Exhibit G: Insurance Requirements

**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.**

WITNESS THE EXECUTION HEREOF the day and year first hereinabove written.

EAST SIDE UNION HIGH SCHOOL DISTRICT

GRANTEE Signature:



Date:

2/3/22

Print Name:

Andre Bell

Title:

Director of Purchasing

City of San José, a municipal corporation

JON CICIRELLI

Director of Parks, Recreation and Neighborhood Services



On behalf of Jon Cicirelli

Date:

02/08/2022

APPROVED AS TO FORM:



AARON YU

Deputy City Attorney



## **CITY OF SAN JOSE GRANT AGREEMENT**

This AGREEMENT is made by and between the CITY OF SAN JOSE, a municipal corporation of the State of California ("CITY"), and the person or entity identified as GRANTEE on Page 1 of the Summary Pages at the beginning of this AGREEMENT ("GRANTEE").

### **THE PARTIES HEREBY AGREE AS FOLLOWS:**

#### **SECTION 1: RECITALS**

WHEREAS, CITY desires to obtain services from GRANTEE; and

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

NOW, THEREFORE, the purpose of this AGREEMENT is to retain GRANTEE to perform those services specified in **EXHIBIT A** of this AGREEMENT.

#### **SECTION 2: PROGRAM COORDINATION**

- A. **CITY:** The Director of the Department 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 who shall have overall responsibility for the progress and execution of this AGREEMENT (GRANTEE Project Director). Additionally, GRANTEE shall immediately notify CITY in writing should circumstances or conditions subsequent to the execution of this AGREEMENT require a substitute GRANTEE Project Director. GRANTEE's Project Director and GRANTEE's staff will fully cooperate with the DIRECTOR relating to the work or services provided hereunder.

#### **SECTION 3: TERM OF AGREEMENT AND GRANT AWARD**

- A. The term of this AGREEMENT shall commence on the Start Date as set forth in the Summary Pages and shall expire on the End Date as 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 GRANTEE wishes to extend this AGREEMENT, a request to extend this AGREEMENT along with a Revised Scope of Services (**EXHIBIT A**), if necessary, should be submitted by GRANTEE to the CITY no less than forty-five (45) days prior to the end 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 4: GRANT SERVICES**

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

#### **SECTION 5: PAYMENTS**

- A. CITY agrees to pay GRANTEE an amount not to exceed the amount set forth on the Summary Pages ("Grant Award"), for the services described in **EXHIBIT A** entitled "Scope of Services", and which payment is subject to the terms and conditions set forth in **EXHIBITS B** and **C** entitled "Budget Summary" and "Payments to GRANTEE and Reporting Schedule." 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 on agency letterhead, or on another format approved by the CITY, that shall identify the name of payee and signed by the Executive Director or other authorized agency representative with authority to confirm the accuracy of reported expenditures. The invoice shall include a detailed summary of activities undertaken during the course of the invoice period. Provided that performance is satisfactory and accepted by CITY, compensation will be made on a cost reimbursement basis. Initial payment will be based on full execution of the AGREEMENT.
- C. CITY will authorize and release payment to GRANTEE 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.
- E. Director or 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;
  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.

6. If GRANTEE submits to CITY any report which is incorrect or incomplete in any material respect, or is untimely.

## **SECTION 6: DEFAULT AND TERMINATION OF AGREEMENT**

- A. CITY may, through CITY's 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 5 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, 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 C**.
  2. Upon termination, GRANTEE shall immediately deliver to CITY any and all copies of materials 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 subgrantee, 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. CITY's Director is authorized to terminate this AGREEMENT on CITY's behalf.
- F. 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 7: SUBJECT TO FUNDING**

If the term of this AGREEMENT is more than one 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.

#### **SECTION 8: 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.

#### **SECTION 9: REPORTING REQUIREMENTS**

GRANTEE shall submit reports of all financial transactions related to GRANTEE's performance under this AGREEMENT ("Financial Reports") prepared in accordance with **EXHIBIT D** and, to the extent applicable, on the schedule specified in **EXHIBIT C**. The format of the Financial 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 D**. In lieu of generating a consolidated quarterly report, the GRANTEE may instead submit, in strict accordance with the above schedule, a report covering each of the months in the reporting period, which includes a Standard Balance Sheet and Standard Income and Expense Statement for each of the months in the reporting period. The Financial Reports must be prepared in accordance with generally accepted accounting principles.

#### **SECTION 10: 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 the 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 D**, "MONITORING, EVALUATION AND REPORTING REQUIREMENTS" sets forth standards regarding the CITY's right to audit, and GRANTEE's obligation to deliver to the CITY reports which may include audited financial reports. GRANTEE further agrees that GRANTEE shall preserve all records related to the performance of this AGREEMENT and that CITY's right to examine or audit the GRANTEE's records, facilities or activities shall continue for four (4) years after the expiration or termination of this AGREEMENT unless a longer period for CITY's audit or GRANTEE's record retention is specified in **EXHIBIT D** as is required by applicable law.

#### **SECTION 11: CITY ACKNOWLEDGMENT**

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

#### **SECTION 12: INSURANCE**

GRANTEE agrees to have the policies set forth in the attached **EXHIBIT G**, entitled "INSURANCE REQUIREMENTS" 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 José 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 prior to execution of this AGREEMENT.

#### **SECTION 13: 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 arise from the gross 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, except as may be caused by the CITY's gross negligence or willful misconduct.
- B. The GRANTEE's obligations under this indemnification provision shall survive the expiration or termination of this AGREEMENT.

#### **SECTION 14: NOTICES**

- A. Any communication or notice which either party is required to send to the other 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.



## **SECTION 15: AMENDMENTS**

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

## **SECTION 16: 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, ethnicity or national origin in connection with or related to the performance of this AGREEMENT.
- C. 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 17: 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 18: 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.

## **SECTION 19: 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 20: INTEGRATED DOCUMENT**

This AGREEMENT, including the Summary Pages, recitals and any Exhibits and appendices, 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 21: 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 affect 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 6 as related to repayment of the Grant Award shall apply.

## **SECTION 22: 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 23: 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 24: RELIGIOUS/POLITICAL ACTIVITIES**

- A. GRANTEE shall not expend any portion of the funds provided under this AGREEMENT (“Grant Award”) to inhibit or promote religion and the Grant Services funded by the Grant Award must not be used to convey a religious message. Any portion of the Grant Award used in contradiction to the provisions of this SECTION 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 25: 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 26: 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, will be voidable at CITY's sole option.

## **SECTION 27: 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 Section 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.
- 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 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 FBI requirement for background checks, then such alternative database shall be subject to the CITY's prior written approval.

## **SECTION 28: GRANTEE'S FINANCIALS.**

- A. City Council requires that each non-profit organization receiving \$320,000 or more in funds from the CITY 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 six months from the end of the non-profit's fiscal year (which period may be extended by the City Manager based upon a showing of hardship or other good cause) and must be viewable by the public at no cost. 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, which provide for the payment of an aggregate amount that equals or exceeds \$320,000 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 \$320,000. 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 funds. These provisions shall apply not only to grant agreements or operating agreements but shall also apply, without limitation, if any amendment to such agreements brings the total annual funding to equal or exceed \$320,000, and also to any other agreements with the CITY that are equivalent in purpose to a grant agreement or an operating subsidy agreement, regardless of the title of the agreement.
- 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 which provide for grants and/or subsidies from the CITY in an aggregate amount equaling or exceeding \$320,000. 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.
- D. Organizations receiving an aggregate amount of \$320,000 or more in funds from the CITY 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 submit via the City's WebGrants grant management system, ("WebGrants"), a completed Financial Dashboard. City's project director will provide a Financial Dashboard template upon

request. The Financial Dashboard must be submitted via WebGrants within six months from the end of GRANTEE's Fiscal Year. This includes the previous Fiscal Year, if that year ended within six months of the commencement of this AGREEMENT.

## **SECTION 29: 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: [EP3 Policy](#)
- 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. (e.g., 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 (e.g., 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 30: 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 6 of this AGREEMENT.

## **SECTION 31: 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.

## **SECTION 32: RETROACTIVE SERVICES**

It is understood and agreed that GRANTEE has provided services prior to the execution of this AGREEMENT in anticipation of its execution. If CITY accepts and approves the services

provided by GRANTEE prior to the date of this AGREEMENT, CITY agrees to compensate GRANTEE for those services in accordance with the terms of this AGREEMENT. However, in no event shall GRANTEE be compensated for work performed for CITY prior to July 1, 2021.

## **EXHIBIT A** **SCOPE OF SERVICES**

GRANTEE will provide the services as described in this EXHIBIT.

In the event GRANTEE desires to modify the Scope of Services, GRANTEE shall apply to CITY in writing setting forth the requested modifications. CITY shall have the authority to approve the following categories of modifications, by letter signed by the CITY, without the necessity of a formal written amendment to this AGREEMENT.

1. Modifications to the times and dates of Scope of Services to be provided; or
2. Modifications to the location of the services provided so long as the proposed location will serve the same target population.

### **A. Period of Service**

The Grant Services will commence on July 1, 2021 and continue through June 30, 2022.

### **B. Description of Services**

The Grant Award to GRANTEE is conditioned upon GRANTEE providing an aquatic program and youth services at the Overfelt Swimming Pool ("Overfelt Pool"), located at: 1835 Cunningham Ave. San José, CA 95122, during the times and dates specified in this Exhibit, and is intended to reimburse GRANTEE for the established pool use fees GRANTEE would ordinarily collect for allowing the use of its pool as described herein.

GRANTEE shall provide access to Overfelt Pool so that it is open to the public for swim programs during the Summer months of June – September. GRANTEE will ensure a minimum of ten (10) hours of open swim programs are made available to the public for two (2) hours a day during the term of this AGREEMENT. GRANTEE may substitute up to two (2) days per week to create an evening recreation swim in lieu of afternoon recreational swim sessions on the same days of week. In the event evening swim is scheduled, it will occur between the hours of 5:00 p.m. and 8:00 p.m.

In addition, GRANTEE will provide drop-in youth services such as sports, fitness, art expression classes and workforce and career development programs creating positive outlets for youth as they reach pivotal identity and character development stages in their adolescence.

- Open Volleyball (Overfelt Gym): Monday and Friday, 6:00 p.m. – 9:00 p.m.
- Open Basketball (Overfelt Gym): Tuesday, Wednesday, and Thursday, 5:00 p.m. – 8:00 p.m.
- Baseball Batting Cages (Baseball Field): Wednesday and Friday, 4:15 p.m. – 6:00 p.m.
- Open Futsal / Indoor Soccer (Overfelt Gym): Monday and Friday, 4:00 p.m. – 6:00 p.m.
- Open Soccer (Overfelt Soccer Stadium): Tuesday and Thursday, 6:00 p.m. – 8:00 p.m.

Within 30 days following the End Date of this AGREEMENT, GRANTEE shall provide CITY with a final report, as described in **EXHIBIT D**, to include the total number of participants at Overfelt Pool for the term of this AGREEMENT. The report must also describe how the Program services met the objectives contained in this AGREEMENT.

**EXHIBIT B**  
**BUDGET SUMMARY**

<b>ELIGIBLE SERVICE DELIVERY</b>	<b>UP TO BUDGET</b>
Salary and Benefits: <ul style="list-style-type: none"> <li>• Lifeguards (5): Tuesday - Saturday</li> <li>• Pool Manager (2): Tuesday - Saturday</li> <li>• Activity Supervisor/Coach (5): Monday - Friday</li> <li>• Classified Support (1): Monday - Friday</li> <li>• Program Coordination (1): Monday - Friday</li> </ul>	Summer 2021: \$22,907 Summer 2022: \$30,000
Supplies and Materials <ul style="list-style-type: none"> <li>• Water Safety Products</li> </ul>	Summer 2021: \$34,627 Summer 2022: \$12,466
<b>Total Grant Amount</b>	<b>Not to exceed \$100,000</b>



**EXHIBIT C**  
**PAYMENTS TO GRANTEE AND REPORTING SCHEDULE**

- A. Payment shall be made as stated in the following schedule, subject to GRANTEE's satisfactory performance of this AGREEMENT.
  
- B. City will release up to \$100,000 after receipt and approval of GRANTEE's final report and invoice (100% of the grant award), for aquatics program and youth drop-in services at Overfelt High School. GRANTEE will provide CITY with a detailed invoice for operational days and program costs as specified in **EXHIBIT B** for an amount not to exceed ONE HUNDRED THOUSAND AND 00/100 DOLLARS (\$100,000).

**EXHIBIT D**  
**MONITORING, EVALUATION AND REPORTING REQUIREMENTS**

**A. Fiscal Responsibilities of GRANTEE:**

GRANTEE shall:

1. Appoint and submit to CITY the name of a fiscal contact who shall be responsible for the financial and accounting activities of the GRANTEE, including the receipt and disbursement of GRANTEE funds.
2. Establish and maintain a system of accounts that shall conform to generally accepted principles of accounting for budgeted funds. Such system of accounts shall be subject to review and approval of CITY.
3. Document all costs by maintaining complete and accurate records of all financial transactions, including but not limited to, contracts, invoices, time cards, cash receipts, vouchers, canceled checks, bank statements and/or other official documentation, evidencing in proper detail the nature and propriety of all charges.
4. If applicable, submit quarterly financial reports at the end of each quarter as outlined in **EXHIBIT C** in such form as CITY shall require.
5. Certify insurability subject to CITY approval as outlined in **EXHIBIT G**.
6. Submit to CITY at such times and in such forms as CITY may require, such statements, records, reports, data, and information pertaining to matters covered by this AGREEMENT.

**B. Records, Reports and Audits of GRANTEE:**

1. Establishment and Maintenance of Records. GRANTEE shall maintain records, including but not limited to, books, financial records, supporting documents, statistical records, personnel, property, and all other pertinent records sufficient to reflect properly:
  - a. All direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this AGREEMENT; and
  - b. All other matters covered by this AGREEMENT. Such records shall be maintained in accordance with requirements now or hereafter prescribed by the CITY.
2. Preservation of Records. GRANTEE shall preserve and make available its records:
  - a. for the period of four (4) years from the date of final payment to GRANTEE under this AGREEMENT; or
  - b. for such longer period, if any, as may be required by applicable law; or

- c. if this AGREEMENT is completely or partially terminated, for a period of four (4) years from the date of any resulting final settlement.
3. Examination of Records and Facilities. At any time during normal business hours, upon advance written notice and as often as may be deemed necessary, GRANTEE agrees that CITY, and/or any of its respective authorized representatives shall have access to and the right to examine any of its plants, offices and/or facilities engaged in performance of this AGREEMENT and all its records with respect to all matters covered by this AGREEMENT. GRANTEE also agrees that the CITY, or any of its authorized representatives shall have the right to audit, examine, and make excerpts or transcripts of and from such records, and to make audits of all contracts and subcontracts, invoices, payrolls, records of personnel, conditions of employment, materials, and all other data relating to matters covered by this AGREEMENT. CITY may examine records or facilities pursuant to this Section throughout the term of this AGREEMENT and
  - a. for a period of four (4) years after final payment under this AGREEMENT; or
  - b. for such longer period as may be required by applicable law; or
  - c. if this AGREEMENT is completely or partially terminated, for a period of four (4) years from the date of any resulting settlement.
4. Audits.
  - a. Independent Audits.
    - (1) If required by CITY's Grant Manager, GRANTEE shall submit an agency audit that conforms to generally accepted auditing standards and that includes the following components:
      - A. Balance Sheet or Statement of Financial Position;
      - B. Statement of Support, Revenue and Expenses and Changes in Fund Balances or Statement of Activities;
      - C. Statement of Functional Expenses;
      - D. Independent Auditor's Report. If the audit includes a Management Letter, this must also be submitted to the CITY.
      - E. Schedule of Government Financial Assistance which identifies the gross amounts of grants obtained from the CITY and other governmental sources and shows the amount received and disbursed under each grant during the audited fiscal year; and
      - F. Report on Compliance and on Internal Control over Financial Reporting based on an Audit of Financial Statements performed in Accordance with Government Auditing Standards indicating that a review of internal controls was performed and identifying material weaknesses and/or reportable conditions, if any.

Funds may be set aside in GRANTEE's budget in an amount equal to CITY's fair share of the GRANTEE's cost of the audit, if required.

(2) If GRANTEE expends \$500,000 or more in a year in Federal awards, GRANTEE shall submit an audit report that conforms to the requirements of OMB Circular A-133 for Non-Profit Institutions. Funds may be set aside in GRANTEE's budget in an amount equal to CITY's fair share of the GRANTEE's cost of an A-133 independent audit, if required.

(3) The GRANTEE's contract with its independent auditor shall require that the audit ascertains and determines that no services provided by the GRANTEE under this AGREEMENT are duplicative of services provided to another agency from which GRANTEE receives funding and are not being reimbursed from funding received from another agency.

(4) GRANTEE shall also submit a written agency management response to the findings of the Internal Control Report, if required.

(5) GRANTEE shall obtain three (3) bids for an outside auditor to conduct the agency audit. The AGREEMENT with an outside auditor can span a term of multiple years but it is highly recommended that the GRANTEE rotate independent auditors every three years.

(6) GRANTEE shall enter into an AGREEMENT with an outside auditor no later than sixty (60) days before the end of each Fiscal Year calling for a financial and compliance audit of GRANTEE's Fiscal Years that are covered by this AGREEMENT. The written AGREEMENT may be in the form of an engagement letter prepared by the auditor and approved by GRANTEE.

(7) An audit report must be completed and posted in PDF format on WebGrants within six months of the end of each of the GRANTEE's Fiscal Years covered by this AGREEMENT. If this AGREEMENT expires or is terminated on a date that occurs after the period covered by the foregoing audit, GRANTEE shall deliver an audit report within two hundred and fifty (250) days after the expiration or termination of this AGREEMENT auditing the period not covered by the prior audit.

(8) A Financial Dashboard must be completed and submitted via WebGrants by all Organizations receiving an aggregate amount \$25,000 or more in funds from the CITY 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. The Financial Dashboard must be submitted via WebGrants **within six months from** the end of GRANTEE's Fiscal Year.

(9) Should GRANTEE not enter into an AGREEMENT with an outside auditor or should an audit not be done on a timely basis, the CITY, at its discretion, may

enter into an AGREEMENT with an independent auditor to do the audit at GRANTEE's expense.

(10) The GRANTEE shall submit to the CITY copies of management letters the auditor prepares for the GRANTEE as part of the audit engagement.

(11) All audits must be performed by Certified Public Accountants currently certified and licensed to practice in the State of California. GRANTEE must have Auditor's proof of current licensing on file in GRANTEE's office. GRANTEE must submit to the CITY's Parks, Recreation and Neighborhood Services Department, Administrative Services Division a copy of Auditor's certification to practice in California with the audit.

- b. CITY Audits. The CITY may perform an independent audit. Such audits may cover programmatic as well as fiscal matters. GRANTEE will be afforded an opportunity to respond to any audit findings, and have the responses included in the final audit report. Costs of such audits will be borne by the CITY.
- c. Disallowed Costs. GRANTEE is liable for repayment of disallowed costs as determined by CITY. Disallowed costs may be identified through audits, monitoring or other sources. GRANTEE shall be afforded the opportunity to respond to any adverse findings that may lead to disallowed costs. CITY shall make the final determination of disallowed costs.
- d. GRANTEE shall not adjust any line item expenditures in the Budget Summary (**EXHIBIT B**) by more than ten percent (10%) without the prior approval of the CITY. GRANTEE shall make such requests for the line item adjustments in writing to the CITY. Failure to do so may, at CITY's option, result in disallowed costs.

### **C. Monitoring and Evaluation**

- 1. GRANTEE agrees to cooperate with CITY on the implementation, monitoring and evaluation of this Program and to comply with any and all reporting, data collection, and evaluation requirements established by CITY, including but not limited to; submission of reports as outlined in this AGREEMENT.
- 2. **Site Visits:** GRANTEE shall cooperate with visits from the CITY or its Evaluation Consultants, for the purpose of verifying the implementation of funded projects, interviewing staff, and/or verifying supporting documentation.
- 3. **Data Collection:** GRANTEE agrees to perform ongoing data collection and sharing in accordance with CITY process to ensure effective service delivery in compliance with this AGREEMENT.

### **D. Reporting**

- 1. **Period-End Report:** GRANTEE shall submit a narrative Period-End Report thirty (30) calendar days after the last day of the term of this AGREEMENT. The report

must describe how the Program services provided met the objectives contained in **EXHIBIT A** and include the total number of participants at Yerba Buena Pool and Mount Pleasant Pool for the term of this AGREEMENT.

**EXHIBIT E**  
**GENERAL SERVICE REQUIREMENTS**

NONE

## EXHIBIT F

### **EMPLOYEE/VOLUNTEER CLEARANCE VERIFICATION AND COMPLIANCE WITH THE CHILD ABUSE AND NEGLECT REPORTING ACT**

If GRANTEE provides services involving minors, and as a CITY-approved method of complying with the provisions contained in this AGREEMENT, GRANTEE shall conduct a criminal background check through the database of the California Department of Justice **and** an FBI criminal database or equivalent national database as approved in writing by GRANTEE's liability insurance provider, on each of its employees and volunteers who have supervisory or disciplinary authority over minors.

GRANTEE shall also comply with the provisions of the Child Abuse and Neglect Reporting Act, California Penal Code Section 11164 et. seq. Additionally, GRANTEE certifies the following:

1. Any and all personnel employed or retained by GRANTEE in conducting the operations of GRANTEE's program shall be qualified to perform the duties assigned to them by GRANTEE. GRANTEE agrees that GRANTEE shall not at any time allow its employees or volunteers to be in any position with supervisory or disciplinary authority over minors, if they have been convicted of any offense identified in California Public Resources Code Section 5164. (Copy attached.)

CITY and GRANTEE understand that results of background checks on minors may be confidential under state law. Therefore, all employees or volunteers must be at least 18 years of age if they are to be in a position having supervisory or disciplinary authority over any minor.

If GRANTEE intends to have employees or volunteers under the age of 18 providing services under this AGREEMENT, GRANTEE shall maintain and make available to CITY, if requested, guidelines, procedures or policies, that safeguard and ensure that no employees or volunteers under the age of 18 will be providing services under this AGREEMENT unsupervised and further GRANTEE shall ensure that none of its employees or volunteers under 18 years of age have any supervisory or disciplinary authority over any minor, as such term is used in California Public Resources Code Section 5164.

2. GRANTEE shall be responsible for ensuring that no person who has supervisory or disciplinary authority over minors, who is paid or unpaid by GRANTEE, shall be permitted to provide services unless appropriate background checks, including fingerprints, have been performed prior to the beginning of services under this AGREEMENT, and the person meets the standards set forth above. If requested by CITY, and to the extent allowed by law, GRANTEE shall promptly provide documentation listing each person that has provided or is providing services hereunder involving supervision or disciplinary authority over minors, and certifying that the GRANTEE has conducted the proper background check on such person or persons, and each of the named persons is legally permitted to perform the services described in this AGREEMENT. Regardless of whether such documentation is requested or delivered by GRANTEE, GRANTEE shall be solely responsible for compliance with the provisions of this Section.
3. That no person paid or unpaid by GRANTEE shall be 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 TB testing



requirements set forth in Section 5163 of the California Public Resources Code (copy attached), verifying that the person or persons has provided evidence/verification of a negative TB skin test reading less than two (2) years old (if newly hired) or within four (4) years (if current employee) of the date of execution of this AGREEMENT and every four (4) years thereafter, if the term of this AGREEMENT exceeds four (4) years.

For persons with a positive TB skin test reading, a physician's medical clearance must be obtained prior to services being provided as specified above. GRANTEE shall keep on file each "Certificate" of clearance for the persons described above, and shall also make available a copy of each Certificate to CITY, if requested and allowed by law. "Certificate" means a document signed by a licensed examining physician and surgeon or a notice from a public health agency or unit of the tuberculosis association which indicates freedom from active tuberculosis.

4. GRANTEE understands that if services are rendered on a school site, there may be additional requirements that may apply including without limitation, requirements under the California Education Code. GRANTEE, acknowledges that it is GRANTEE's sole responsibility to comply with all applicable laws, regulations and licensing requirements in GRANTEE's provision of services hereunder.

I, the GRANTEE by signing below verify that I have read and agree to the above:

  
\_\_\_\_\_  
Signature/Title

2/3/22  
\_\_\_\_\_  
Date

## CALIFORNIA PUBLIC RESOURCES CODE SECTION 5164

**§ 5164.** Persons convicted of certain offenses not to be hired for employment or as volunteer in positions with supervisory authority over minors; Criminal background screening; Fees

(a) (1) A county, city, city and county, or special district shall not hire a person for employment, or hire a volunteer to perform services, at a county, city, city and county, or special district operated park, playground, recreational center, or beach used for recreational purposes, in a position having supervisory or disciplinary authority over a minor, if that person has been convicted of an offense specified in paragraph (2).

(2) (A) A violation or attempted violation of Section 220, 261.5, 262, 273a, 273d, or 273.5 of the Penal Code, or any sex offense listed in Section 290 of the Penal Code, except for the offense specified in subdivision (d) of Section 243.4 of the Penal Code.

(B) A felony or misdemeanor conviction specified in subparagraph (C) within 10 years of the date of the employer's request.

(C) A felony conviction that is over 10 years old, if the subject of the request was incarcerated within 10 years of the employer's request, for a violation or attempted violation of an offense specified in Chapter 3 (commencing with Section 207) of Title 8 of Part 1 of the Penal Code, Section 211 or 215 of the Penal Code, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022 of the Penal Code, in the commission of that offense, Section 217.1 of the Penal Code, Section 236 of the Penal Code, any of the offenses specified in Chapter 9 (commencing with Section 240) of Title 8 of Part 1 of the Penal Code, or an offense specified in subdivision (c) of Section 667.5 of the Penal Code, provided that no record of a misdemeanor conviction shall not be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor convictions, or a combined total of three or more misdemeanor and felony convictions, for violations listed in this section within the 10-year period immediately preceding the employer's request or has been incarcerated for any of those convictions within the preceding 10 years.

(b) (1) To give effect to this section, a county, city, city and county, or special district shall require each such prospective employee or volunteer to complete an application that inquires as to whether or not that individual has been convicted of an offense specified in subdivision (a). The county, city, city and county, or special district shall screen, pursuant to Section 11105.3 of the Penal Code, any such prospective employee or volunteer, having supervisory or disciplinary authority over a minor, for that person's criminal background.

(2) A local agency request for Department of Justice records pursuant to this subdivision shall include the prospective employee's or volunteer's fingerprints, which may be taken by the local agency, and any other data specified by the Department of Justice. The request shall be made on a form approved by the Department of Justice. A fee shall not be charged to the local agency for requesting the records of a prospective volunteer pursuant to this subdivision.

(3) A county, city, city and county, or special district may charge a prospective employee or volunteer described in subdivision (a) a fee to cover all of the county, city, city and county, or special district's costs attributable to the requirements imposed by this section.

## **CALIFORNIA PUBLIC RESOURCES CODE SECTION 5163**

**§ 5163.** Certificate showing freedom from communicable tuberculosis as condition of employment

(a) No person shall initially be employed in connection with a park, playground, recreational center, or beach used for recreational purposes by a city or county in a position requiring contact with children, or as a food concessionaire or other licensed concessionaire in that area, unless the person produces or has on file with the city or county a certificate showing that within the last two years the person has been examined and has been found to be free of communicable tuberculosis.

(b) Thereafter, those employees who are skin test negative shall be required to undergo the foregoing examination at least once each four years for so long as the employee remains skin test negative. Once an employee has a documented positive skin test which has been followed by an X-ray, the foregoing examination is no longer required and a referral shall be made within 30 days of the examination to the local health officer to determine the need for follow-up care.

"Certificate" means a document signed by the examining physician and surgeon who is licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, or a notice from a public health agency or unit of the tuberculosis association which indicates freedom from active tuberculosis.

### **§ 5163.1.** Tuberculosis examination

The examination shall consist of an approved intradermal tuberculosis test, which, if positive, shall be followed by an X-ray of the lungs.

Nothing in Sections 5163 to 5163.2, inclusive, shall prevent the governing body of any city or county, upon recommendation of the local health officer, from establishing a rule requiring a more extensive or more frequent examination than required by Section 5163 and this section.

### **§ 5163.2.** Technician taking X-ray film; Interpretation of X-ray

The X-ray film may be taken by a competent and qualified X-ray technician if the X-ray film is subsequently interpreted by a licensed physician and surgeon.

### **§ 5163.3.** Files kept of certificates

The city or county shall maintain a file containing an up-to-date certificate for each person covered by Section 5163.

### **§ 5163.4.** Requiring more extensive or more frequent examinations

Nothing in Sections 5163 to 5163.3, inclusive, shall prevent the city or county from requiring more extensive or more frequent examinations.

## EXHIBIT G

### INSURANCE REQUIREMENTS

GRANTEE, at GRANTEE'S sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by GRANTEE, its agents, representatives, employees or subcontractors.

#### A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles.
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and

There shall be no endorsement reducing the scope of coverage required above unless approved by the City's Risk Manager.

#### B. Minimum Limits of Insurance

GRANTEE shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury, property damage and cost of defense for any abuse and molestation claims. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and

#### C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by CITY's Risk Manager. At the option of CITY, either; the insurer shall reduce or eliminate such deductibles or

self-insured retentions as respects CITY, its officers, employees, agents and contractors; or GRANTEE shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the CITY's Risk Manager.

**D. Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages

a. The City of San José, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, GRANTEE; products and completed operations of GRANTEE; premises owned, leased or used by GRANTEE; and automobiles owned, leased, hired or borrowed by GRANTEE. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.

b. GRANTEE's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of GRANTEE's insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies by GRANTEE shall not affect coverage provided CITY, its officers, employees, agents, or contractors.

d. Coverage shall state that GRANTEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

e. Coverage shall contain waiver of subrogation in favor of the City of San José, its officers, employees, agents and contractors

2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of the City of San José, its officers, employees, agents and contractors

3. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY, except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

**E. Acceptability of Insurers**

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

F. **Verification of Coverage**

GRANTEE shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to: [Riskmgmt@sanjoseca.gov](mailto:Riskmgmt@sanjoseca.gov), or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

City of San José  
Finance - Risk Management  
200 East Santa Clara St., 14<sup>th</sup> Floor Tower  
San José, CA 95113-1905

G. **Subcontractors**

GRANTEE shall include all subcontractors as insured under its policies or shall obtain separate certificates and endorsements for each subcontractor.



# Memorandum

**TO:** Jon Cicirelli, Director of PRNS

**FROM:** Petra Riguro  
Interim Program Manager

**SUBJECT:** Approval of Retroactivity

**DATE:** 9/8/2021

Approved

Date 02/08/2022

On behalf of Jon Cicirelli

**SUBJECT: APPROVAL OF RETROACTIVITY IN THE AGREEMENT FOR OVERFELT HIGH SCHOOL SUMMER AQUATICS AND RECREATION**

In June 2013, the City Auditor released an audit report entitled "Consulting Agreements: Better Enforcement of Procurement Rules, Monitoring, and Transparency is Needed." (City Audit Report No. 13-06.) Recommendation No. 4 (Audit Report pages 16-17) involves limiting retroactive agreements to situations where contract execution is in process. The audit report states that when a City employee informally authorizes work before execution of the agreement, the employee commits City funds not within his/her authority to commit.

The Parks, Recreation, and Neighborhood Services (PRNS) Department is seeking authorization for the retroactive provision to pay for services in the Overfelt High School Summer Aquatics and Recreation.

The justification for the request to include a retroactivity provision is that:

- Its execution was already in process when the services started.
- The services responded to an *immediate* threat to public health, safety, or property.
- The manner of compensation doesn't involve a commitment of City funds.
- The consultant/contractor provided a letter stating that the City isn't obligated to pay for any services it provided if the contract/amendment isn't executed.
- Starting services protected or advanced the following significant City interest:

As a result of the Mayor's June 2021 Budget Message, City Council directed the City Manager to allocate \$100,000 in one-time funds from the Essential Services Reserve to provide staffing for an open pool to the general public and drop-in services for youth (BD #94 Arenas). In this



September 8, 2021

**Subject: OVERFELT HIGH SCHOOL SUMMER AQUATICS AND RECREATION**

Page 2

case, services have been conducted by East Side Union High School District, which provides an aquatic program and youth services at William C. Overfelt High School during Summer 2021, starting July 1, 2021.

This agreement is retroactive to capture critical services already provided in an area identified as a gang hotspot. Some delay in execution occurred due to availability of staffing in the Parks, Recreation and Neighborhood Services department's Recreation Division. Staff was working on urgent Aquatic hiring needs. PRNS acknowledges the process was out of City contract compliance and will monitor future agreements to prevent this oversight in the future.



---

Petra Riguero  
Interim SPU Program Manager

For questions please contact Petra Riguero, Interim Program Manager, via e-mail at [Petra.Riguero@sanjoseca.gov](mailto:Petra.Riguero@sanjoseca.gov).





- FOR YOUR ELECTRONIC SIGNATURE
- FULLY EXECUTED COPY TO FOLLOW

CITY STAFF: Alex Niles  
EMAIL: Alex.Niles@sanjoseca.gov

### SCANNED SIGNATURE AUTHORIZATION

DATE: 2-3-2022  
TO: ANDRE R. BELL  
EMAIL: bella@esuhso.org  
PHONE: 408/347-5070

TOTAL PAGES: 32  
(INCLUDING THIS PAGE)  
TO: \_\_\_\_\_  
EMAIL: \_\_\_\_\_  
PHONE: \_\_\_\_\_

I agree to use electronic signatures

I agree to use electronic signatures

BY: [Signature]

BY: \_\_\_\_\_

#### DIRECTIONS:

REVIEW THE ENCLOSED DOCUMENT, IF IT IS ACCEPTABLE:

1. SIGN THE DOCUMENT
2. CHECK THE BOX BELOW YOUR NAME AND SIGN AGREEING TO THE USE OF ELECTRONIC SIGNATURES
3. SCAN YOUR EXECUTED DOCUMENT TOGETHER WITH THIS COVER PAGE **IN COLOR**
4. EMAIL THE ENTIRE DOCUMENT TO

#### TO BE COMPLETED BY CITY STAFF:

ALTERNATIVE METHODS OF VERIFICATION:

- USE OF A PASSWORD PROTECTED WEBSITE
- CONFIRMED BY A KNOWN TELEPHONE NUMBER
- PERSONALLY KNOWN TO CITY STAFF


Northern California ReLiEF Protected Insurance Program for Schools	CERTIFICATE OF COVERAGE	Issue Date 7/12/2021
---	-------------------------	-------------------------

<b>ADMINISTRATOR:</b> Keenan & Associates 1732 North First Street, Suite 100 San Jose, CA 95112  Frances Freeman ffreeman@keenan.com	LICENSE # 0451271   408-441-0754 x6156	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE COVERAGE DOCUMENTS BELOW.  <b>ENTITIES AFFORDING COVERAGE:</b>  ENTITY A: Northern California ReLiEF ENTITY B: Protected Insurance Program for Schools  ENTITY C: ENTITY D: ENTITY E:
<b>COVERED PARTY:</b> East Side Union High School District 830 North Capitol Avenue San Jose CA 95133		

THIS IS TO CERTIFY THAT THE COVERAGES LISTED BELOW HAVE BEEN ISSUED TO THE COVERED PARTY NAMED ABOVE FOR THE PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE COVERAGE AFFORDED HEREIN IS SUBJECT TO ALL THE TERMS AND CONDITIONS OF SUCH COVERAGE DOCUMENTS.

ENT LTR	TYPE OF COVERAGE	COVERAGE DOCUMENTS	EFFECTIVE/ EXPIRATION DATE	MEMBER RETAINED LIMIT / DEDUCTIBLE	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCURRENCE <input checked="" type="checkbox"/> GOVERNMENT CODES <input checked="" type="checkbox"/> ERRORS & OMISSIONS <input type="checkbox"/>	NCR 00103-35	7/1/2021 7/1/2022	\$ 25,000	COMBINED SINGLE LIMIT EACH OCCURRENCE \$ 1,000,000
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> HIRED AUTO <input checked="" type="checkbox"/> NON-OWNED AUTO <input checked="" type="checkbox"/> GARAGE LIABILITY <input checked="" type="checkbox"/> AUTO PHYSICAL DAMAGE	NCR 00103-35	7/1/2021 7/1/2022	\$ 25,000	COMBINED SINGLE LIMIT EACH OCCURRENCE \$ 1,000,000
A	<b>PROPERTY</b> <input checked="" type="checkbox"/> ALL RISK <input checked="" type="checkbox"/> EXCLUDES EARTHQUAKE & FLOOD <input type="checkbox"/> BUILDER'S RISK	NCR 00103-35	7/1/2021 7/1/2022	\$ 25,000	\$ 500,250,000 EACH OCCURRENCE
A	<b>STUDENT PROFESSIONAL LIABILITY</b>	NCR 00103-35	7/1/2021 7/1/2022	\$ 25,000	\$ Included EACH OCCURRENCE
B	<b>WORKERS COMPENSATION</b> <input checked="" type="checkbox"/> EMPLOYERS' LIABILITY	PIPS0012118	7/1/2021 7/1/2022	\$	<input type="checkbox"/> WC STATUTORY LIMITS <input checked="" type="checkbox"/> OTHER  \$ 1,000,000 E.L. EACH ACCIDENT
	<b>EXCESS WORKERS COMPENSATION</b> <input type="checkbox"/> EMPLOYERS' LIABILITY			\$	\$ 1,000,000 E.L. DISEASE - EACH EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMITS
	<b>OTHER</b>			\$ \$	

**DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/RESTRICTIONS/SPECIAL PROVISIONS:**  
 As respects to City of San Jose Agreement for Grant.

<b>CERTIFICATE HOLDER:</b> Grants  City of San Jose - Finance Department Risk & Insurance Program 200 East Santa Clara Street, 14th Floor Tower San Jose CA 95113	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS   <div style="text-align: right;">                       John Stephens                      AUTHORIZED REPRESENTATIVE                 </div>
--	--

**ENDORSEMENT**

**ADDITIONAL COVERED PARTY**

COVERED PARTY East Side Union High School District	COVERAGE DOCUMENT NCR 00103-35	ADMINISTRATOR Keenan & Associates
---	-----------------------------------	--------------------------------------

Subject to all its terms, conditions, exclusions, and endorsements, such additional covered party as is afforded by the coverage document shall also apply to the following entity but only as respects to liability arising directly from the actions and activities of the covered party described under “as respects” below.

**Additional Covered Party:**

City of San Jose - Finance Department  
Risk & Insurance Program  
200 East Santa Clara Street, 14th Floor Tower  
San Jose CA 95113

**As Respects:**

As respects to City of San Jose Agreement for Grant.

The City of San Jose, its officers, employees, agents and contractors are named as additional covered parties as respects: Liability arising out of activities performed by or on behalf Grantee.

This coverage shall be primary to the certificate holders coverage as respects to the actions and activities of the Covered Party due to their sole negligence.  
The insurance of the Additional Covered Party shall not be called upon to contribute to a loss covered by the Covered Party's coverage.



---

Authorized Representative

Issue Date: 7/12/2021



## PIPS Waiver of Our Right to Recover From Others Endorsement

Covered Party		Endorsement Number	
Santa Clara County SIG/East Side Union High School District		43	
Memorandum of Coverage #	Memorandum of Coverage Period	Effective Date of Endorsement	
PIPS0012118	7/1/2021 - 7/1/2022	7/1/2021	12:01 AM
Issued By (Name of Entity)			
Protected Insurance Program for Schools			

### Workers' Compensation and Employers' Liability Policy

This endorsement applies only to the coverage provided by the Memorandum of Coverage. We have the right to recover our payments from anyone liable for an injury covered by this Memorandum of Coverage. We will not enforce our right against the person or organization name in the Schedule, but this waiver applies only with respect to bodily injury arising out of the operations described in the Schedule, where you are required by a written contract to obtain this waiver from us.

### Schedule

**Specific Waiver - Name of Person or Organization:**

City of San Jose-Finance Dept. Risk Ins. Program  
 200 East Santa Clara St, 14th Floor Tower  
 San Jose, CA 95113

**Operations:**

Proof of coverage for Grant application.

**Contribution:**

There is no contribution charged for this endorsement.

Authorized Agent



License #0451271

Confidential Client Use Only

**INSTRUCTIONS FOR INSURANCE APPROVAL:**

Forward the following to: **RISK & INSURANCE**

200 E. Santa Clara Street 14<sup>th</sup> Floor

San Jose, CA 95113-1905

Riskmgmt@sanjoseca.gov


1. This form (149-7) completed;
2. Copy of face page of Contract;
3. Copy of insurance requirements included in contract.
4. Copy of Service Provider's certificate of insurance.

**NOTIFICATION OF CONTRACT BEING PROCESSED**

DATE: 8/11/2021

Service Provider:	East Side Union HSD	Phone No.	
Project:	Overfelt HS Summer Aquatics Program		
		Project Amount:	\$100,000
Estimated Start Date	7/1/2021	Estimated Completion Date	6/30/2022
Scope of Work: The purpose of this grant agreement is to reimburse GRANTEE Ease Side Union HSD, for Overfelt Pool operations and drop-in youth services at Overfelt High School.			
Department	PRNS	Division	Administrative Services
Department Contact	Alex Niles	Ph./Ext:	(408) 535-3570 X33592
		Fax:	

**COMPLIANCE WITH INSURANCE REQUIREMENTS**

Comments:	_____
Signature:	 _____ Risk & Insurance
	Date: <u>9/9/21</u>

FOR RISK & INSURANCE USE ONLY

Date Forwarded to City Clerk:

Date forwarded to City Clerk:

**COMPLIANCE WITH BOND REQUIREMENTS**

Signature:	_____	Date:	
	City Clerk		

## Certificate of Insurance Checklist

	<b>(Yes)</b>	<b>(No)</b>
A. Insured name on certificate of insurance must match the contract face page	<input checked="" type="checkbox"/>	<input type="checkbox"/>
B. Insurance coverages should match those found in the insurance requirements	<input checked="" type="checkbox"/>	<input type="checkbox"/>
C. Limits of insurance should meet or exceed those found in the insurance requirements	<input checked="" type="checkbox"/>	<input type="checkbox"/>
D. All documented policies must be current and not expired	<input checked="" type="checkbox"/>	<input type="checkbox"/>
E. The City of San José should be an Additional Insured on the Vendor's General and Auto Liability policies	<input checked="" type="checkbox"/>	<input type="checkbox"/>
F. The workers' compensation policy should document a waiver of subrogation in favor of the City of San José	<input checked="" type="checkbox"/>	<input type="checkbox"/>
If any of the following has been marked as a <b>(No)</b> then request an updated Certificate of Insurance from the Vendor before submission		

# City of San José Contract/Agreement Transmittal Form

## Route Order

## Attached / Completed

## Electronically Signed

TO:  City Attorney  
 City Manager  
 City Clerk **OR** Return to  
 Dept. (circle one)

Insurance Certificates / Waivers  Electronically Signed: Yes  
Business Tax Certificate  Audit Trail Attached (if applicable)  
 Contacted Clerk re: Form 700  Scanned Signature Authorization  
 Supplemental Memorandums (if applicable): Select One

Type of Document: New Contract

Type of Contract: Grant Applications/Agreements

### REQUIRED INFORMATION FOR ALL CONTRACTS:

Existing GILES # 667438-000

Contractor: East Side Union High School District

Address: 830 N Capitol Avenue San Jose, CA 95133

Phone: (408) 347-5070

Email: bella@esuhsd.org

Contract Description: The purpose of this grant agreement is to reimburse GRANTEE East Side Union High School District for Overfelt Pool operations and drop-in youth services at Overfelt High School.

Term Start Date: July 1, 2021

Term End Date: June 30, 2022

Extension: No

Method of Procurement: N/A

RFB, RFP or RFQ No.: \_\_\_\_\_

Date Conducted: \_\_\_\_\_

Agenda Date (if applicable): 6/22/2021

Agenda Item No.: 2.18

Resolution No.: 80104

Ordinance No.: \_\_\_\_\_

Original Contract Amount: \_\_\_\_\_

Amount of Increase/Decrease: \_\_\_\_\_

Option #: \_\_\_\_\_ of \_\_\_\_\_

Option Amount: \_\_\_\_\_

NTE/Updated Contract Amount: \$100,000

Fund/Appropriation: 001 / 0642

Form 700 Required (Selection mandatory for processing): No

Revenue Agreement: No

Tax Certificate No.: n/a

Expiration Date: n/a

Department: PRNS (64)

Department Contact: Alex Niles (408) 793-5592

Customer (Finance Only): \_\_\_\_\_

Notes: PRNS DB# 646959

Department Director Signature: \_\_\_\_\_



On behalf of Jon Cicirelli

02/08/2022

Date

Office of the City Manager Signature: \_\_\_\_\_

Date