

CITY OF SAN JOSE AGREEMENT

SUMMARY PAGE

This GRANT AGREEMENT is entered into this 7th day of September, 2021, by the **CITY OF SAN JOSE** ("City"), a municipal corporation, and **SAN JOSE CHILDREN'S MUSICAL THEATER**, a California nonprofit corporation ("GRANTEE").

Department: Office of Cultural Affairs

Dept. Contract No.: 3049 CAO Document No.: 1212438

WebGrants ID: 43204

Agency:

SAN JOSE CHILDREN'S MUSICAL THEATER

Project:

FY2021-22 Operating Grant

Description:

GRANTEE shall produce a season of arts programs and activities as detailed in GRANTEE's FY2021-22 Operating Grant Application.

Funding Source: TOT (461-60020110-4064)

Contract Amount Not to Exceed: \$204,631

Payment Terms: This agreement provides partial funding for arts and/or cultural services provided by GRANTEE. See Exhibit C.

Agreement Term: Start Date: Date of Execution End Date: September 30, 2022

PARTIES TO AGREEMENT:

	GRANTEE	CITY OF SAN JOSE
Agency Name:	San Jose Children’s Musical Theater	Office of Cultural Affairs
Address for Legal Notice:	1545 Parkmoor Ave	200 E. Santa Clara St, 12 th Floor
City/State/Zip Code:	San Jose, CA 95128	San Jose, CA 95113
Attention:	Dana Zell	Kerry Adams Hapner
E-mail Address:	dana@cmts.j.org	kerry.adams-hapner@sanjoseca.gov
Telephone No.:	408-288-5437 x315	408-793-4333
Taxpayer ID	23-7235146	
City Business License/ Tax No.:	9647690210	
Type of Entity:	501 (c) 3	
State of Incorporation or Residency:	CA	

CONTACT INFORMATION

GRANTEE Contact Person:	Dana Zell
Title:	Managing Director
Telephone No:	408-288-5437 x315
Email:	dana@cmts.j.org

CITY Contact Person:	Emily Sevier
Title:	Arts Program Manager
Telephone No:	408-793-4347
Email:	emily.sevier@sanjoseca.gov

EXHIBIT LIST

- | YES | N/A | |
|-------------------------------------|-------------------------------------|--------------------------------------------------------------------|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Exhibit A: Scope of Services and Units of Service |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Exhibit B: Budget Summary |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Exhibit C: Payments to GRANTEE and Reporting Schedule |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Exhibit D: Monitoring, Evaluation, and Reporting Requirements |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 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 | |
|-------------------------------------|-------------------------------------|--------------------------|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | City of San José Funding |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Federal |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | State |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | County |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Other Public Agency |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Private Funding Agency |

- | | | |
|-------------------------------------|--------------------------|--------------------------------------------------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Exhibit F: Employee/Volunteer Clearance Verification and Compliance with the Child Abuse and Neglect Reporting Act |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 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.

“CITY”

FORM APPROVED BY THE OFFICE OF
THE CITY ATTORNEY
Attorney
Arlene Silva
Deputy City Attorney IV U
arlene.silva@sanjoseca.gov

CITY OF SAN JOSE, a municipal corporation

Sarah Zarate
Sarah Zarate (9/7/2021)
Email: sarah.zarate@sanjoseca.gov

By _____
SARAH ZARATE

Arlene Silva
Arlene Silva (9/3/2021)
Email: arlene.silva@sanjoseca.gov

San Jose Children’s Musical Theater
“GRANTEE”

Dana Zell
dana@cmts.org (9/3/2021)
Email: dana@cmts.org

By _____
Name: Dana Zell
Managing Director



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 partially fund arts and cultural 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.

- C. 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 prior to the start date of the AGREEMENT term as noted on the "Summary Page" of this AGREEMENT.

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 **EXHIBIT C** entitled "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. CITY will not pay for unauthorized services rendered by GRANTEE or for claimed services which GRANTEE has not provided as required by this AGREEMENT.
- C. 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 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 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 the 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 as specified in detail in **Exhibit E**, entitled "GENERAL SERVICE REQUIREMENTS."

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 upon 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 \$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, 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: <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.)
1. Use of Energy Star Compliant equipment.
2. Vehicles and vehicle operations (i.e. Alternative Fuel, Hybrid, etc.)
3. Internal waste reduction and reuse protocol(s).
4. 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.
- C. Use of Electronic Signatures: Unless otherwise prohibited by law or CITY policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a writing as set forth in Evidence Code Section 1550. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the CITY.

EXHIBIT A

SCOPE OF SERVICES

GRANTEE shall provide the services as described in this EXHIBIT.

A. Period of Service.

The Grant Services will commence upon date of execution and continue through September 30, 2022.

B. Description of Services.

- (a) GRANTEE shall provide the arts and/or cultural services set forth in GRANTEE's 2021-22 application for Operating Grants dated March 12, 2021 including the plans, objectives and other terms and conditions contained therein, a copy of which is on file in the OCA and which is incorporated herein by reference (collectively referred to as the "Grant Plan").
- (b) GRANTEE shall notify the City's Director in advance of instituting any significant change to the Grant Plan and shall not materially change the nature or scope of the Grant Plan during the term of this Agreement without prior written approval of the City's Director. The City's Director is not authorized to approve significant reductions in the services provided under Grant Plan, nor changes in compensation. Any such reductions or changes in compensation must be documented by a written amendment to this Agreement, which shall also result in a reduction in Grant Award.
- (c) Without limitation of any other provision of this Agreement, failure to comply with item (b) in this Exhibit A may result in suspension of payment of the Grant Award or termination of this Agreement, or both.

EXHIBIT C

PAYMENTS TO GRANTEE

Payment shall be made as stated in the following schedule, subject to GRANTEE's satisfactory performance of this AGREEMENT.

The total grant amount ("Grant Award") awarded to GRANTEE shall not exceed **\$204,631**. The Grant Award shall be disbursed to GRANTEE as follows:

- a) CITY shall pay GRANTEE, following execution of this Agreement and the beginning of the term of this Agreement, 80 percent of the Grant Award, rounded to the nearest dollar;
- b) No sooner than May 15, 2022 or three months before the end of this Agreement, whichever is later, CITY shall pay GRANTEE the remainder of the Grant Award.

City shall not make any payment of the Grant Award unless GRANTEE has:

- (1) paid all of its outstanding debts due to City or City's subcontractors, or both, in consideration of GRANTEE's use of City's property and/or facilities and services;
- (2) fulfilled all provisions of the Arts Grant Agreement of the fiscal year 2020-21 (if applicable), including compiled, reviewed or audited financial report for FY2019-20 or CY2020, as noted in its grant application; **and** completed submission of all required attachments for the 2021-22 Operating Grant Application.

GRANTEE acknowledges that GRANTEE's right to receive the Grant Award is contingent upon the City's full receipt of anticipated Transient Occupancy Tax revenues (TOT) in fiscal year 2021-2022. If the TOT received by the City and allocated by City Council to the Office of Cultural Affairs ("OCA"), is not sufficient to cover collectively all grant awards made by OCA, City may, at its sole discretion, terminate this Grant Agreement. In such event, GRANTEE shall promptly return up to the entire amount of the Grant Award paid to GRANTEE, in compliance with a written request from City's Director, and the City shall have no further obligation toward GRANTEE.

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. Certify insurability subject to CITY approval as outlined in EXHIBIT G.
4. 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.
- (2) If GRANTEE expends \$750,000 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) 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.
 - (9) The GRANTEE shall submit to the CITY copies of management letters the auditor prepares for the GRANTEE as part of the audit engagement.
 - (10) 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 Director 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.

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:** If requested by CITY, 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

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.

1. If requested by CITY, GRANTEE agrees to complete and submit to the OCA, no later than February 1, 2022 or the last day of the seventh month of the term of this Agreement, whichever is later, a **Progress Report**, utilizing forms and instructions provided by the OCA, reporting operations for the first six (6) months of this Agreement and setting forth, without being limited to, the following:
 - a. An accounting of actual expenses and income to date from all sources, as they relate to the Grant Plan; and
 - b. Grant Plan activities implemented, and actual public participation or attendance, including its demographic character.
 - c. Copies of press releases and/or other promotional materials, especially as they relate to the Grant Plan.
2. GRANTEE shall complete and submit to the OCA a **Final Report**, utilizing forms and instructions provided by the OCA. **GRANTEE shall furnish the OCA one (1) copy of the Final Report no later than the last day of this Agreement's term** setting forth, without being limited to, the following:
 - a. An accounting of actual expenses and income from all sources for the first twelve months of this Agreement; and
 - b. Grant Plan activities implemented, and actual public participation or attendance.
 - c. Samples of promotional materials related to the Grant Plan, clearly indicating the required acknowledgment of City support as indicated in **Exhibit E**, entitled "GENERAL SERVICE REQUIREMENTS."

EXHIBIT E**GENERAL SERVICE REQUIREMENTS**

- 1. Acknowledgement of City Support:** GRANTEE shall acknowledge the support of the City of San José, where appropriate, and include on all informational materials, including, but not limited to, press releases, brochures, flyers, catalogues, programs, posters, advertisements, Public Service Announcements, Web sites and film, video, radio and other media materials: **“Supported in part, by a Cultural Affairs grant from the City of San José.”** In the event that GRANTEE acknowledges the support of other funders by the display of funders’ logos, it shall include the display of the City’s logo as well in accordance with the City’s guidelines for the display of the logo.

GRANTEE is exempt from this requirement in those instances where the information materials pertain to activities or expenditures for which the use of this Grant Award is specifically proscribed by the provisions of the Operating Grants Program or this Agreement.

- 2. Copyright Law/Indemnification:** No copyrighted musical or visual arts composition shall be performed or played, whether amplified, televised, in the form of a mechanical recording or personal rendition, or otherwise, in connection with any use of City property or for any activity funded in whole or in part by City funds, unless the GRANTEE shall have first obtained all approvals and paid any license fee or other fee required by the copyright owner. GRANTEE hereby agrees to defend, indemnify and hold City harmless from and against any and all claims of infringement or any other liability or responsibility whatsoever for violation of the right of any such copyright owner under any copyright law.
- 3. Grant Use Restrictions:** GRANTEE agrees that it shall not use CITY’s Grant Award to purchase capital equipment (other than office equipment described below) or real property, and that expenditure of CITY’s Grant Award on capital equipment or real property purchases shall constitute a breach of this Agreement. For purposes of this grant, typical office equipment such as computers, fax machines, scanners are permitted expenditures, but other capital equipment expenditures are not permitted hereunder, including without limitation, vehicles, heating or air conditioning systems, or other fixtures. GRANTEE shall obtain the CITY’s prior approval of any office equipment purchase that is not clearly permitted hereunder. GRANTEE shall reimburse CITY for any expenditures of CITY’s Grant Award on disallowed capital equipment or real property purchases upon CITY’s demand.

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:

x Dana Zell
dana@cmts.org (9/3/2021)
Email: dana@cmts.org

Signature/Title

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 a 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, an offense 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 a 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) Hereafter, 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 followup 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

The GRANTEE, at his 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 the GRANTEE, its agents, representatives, employees or subcontractors.

I. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- A. The coverage described in Insurance Services Office Form Commercial General Liability coverage ("occurrence") Form Number CG 0001, including products and completed operations; and
- B. The coverage described in Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
- C. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance.

II. Minimum Limits of Insurance

The GRANTEE shall maintain limits no less than:

- A. Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial 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
- B. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
- C. 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.

III. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by the CITY's Risk Manager.

IV. Other Insurance Provisions

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

A. Commercial General Liability and Automobile Liability Coverages.

1. Insured. The CITY OF SAN JOSE, 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, the GRANTEE; products and completed operations of the GRANTEE; premises owned, leased or used by the GRANTEE; and automobiles owned, leased, hired or borrowed by the GRANTEE. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officers, employees, agents and contractors.
2. Contribution Not Required. The GRANTEE's insurance coverage shall be primary insurance as respects the CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by the CITY, its officers, employees, agents or contractors shall be excess of the GRANTEE's insurance and shall not contribute with it.
3. Provisions Regarding the Insured's Duties After Accident or Loss. Any failure to comply with reporting provisions of the policies by the GRANTEE shall not affect coverage provided the CITY, its officers, employees, agents, or contractors.
4. Coverage. Coverage shall state that the 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.

B. All Coverages.

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days prior written notice has been given to the CITY's Risk Manager.

V. Acceptability of Insurers

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

VI. Verification of Coverage

The GRANTEE shall furnish the CITY with certificates of insurance and with endorsements affecting coverage required by this AGREEMENT. The certificates and copies 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 emailed in pdf format to Riskmgmt@sanjosca.gov:.

CERTIFICATE HOLDER
City of San José – Finance Department
Risk & Insurance Program
200 East Santa Clara Street, 14th Floor Tower
San José, CA 95113-1905

VII. Subcontractors

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