

**CITY OF SAN JOSE
GRANT AGREEMENT**

SUMMARY PAGE

This GRANT AGREEMENT is entered into this 10th day of November, 2021, by the **CITY OF SAN JOSE**, a municipal corporation (“CITY”), and **San Jose Downtown Association**, a California public benefit nonprofit corporation (“GRANTEE”).

Description:

GRANTEE will produce a season of arts programs and activities as detailed in Agency’s Revised FY 2020-21 Festival, Parade and Celebration Grant Application as listed in **EXHIBIT A: Scope of Services**.

Funding Source:

American Rescue Plan Act (ARPA)

Amount Not to Exceed:

\$11,500

Payment Terms:

See Exhibit D

Agreement Term:

Start Date: Upon Execution End Date: 6/30/22

PARTIES TO AGREEMENT:	GRANTEE	CITY
Name:	San Jose Downtown Association	CITY OF SAN JOSE
Address for Legal Notice:	28 N 1st St Ste 1000 San José, CA 95113	Office of Economic Development and Cultural Affairs 200 E. Santa Clara Street, 12 th Fl. San José, CA 95113
Attention:	Rick Jensen	Kerry Adams Hapner Director
Email Address:	rjensen@sjdowntown.com	Kerry.adams- hapner@sanjoseca.gov
Telephone No.:	408 279-1775 X318	408-793-4333
Federal Taxpayer ID:	77-0149717	
City Business License/ Tax No.:	7421221210	
Type of Entity:	501 (c) 3	
State of Incorporation or Residency:	CA	

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CONTACT INFORMATION

<u>GRANTEE CONTACT PERSON:</u>	<u>Rick Jensen</u>
<u>Title:</u>	
<u>Telephone Number:</u>	<u>408 279-1775 X318</u>
<u>Email:</u>	<u>rjensen@sjdowntown.com</u>

<u>CITY CONTACT PERSON:</u>	<u>Kerry Adams Hapner</u>
<u>Title:</u>	<u>Director</u>
<u>Telephone Number:</u>	<u>408-793-4333</u>
<u>Email:</u>	<u>Kerry.adams-hapner@sanjoseca.gov</u>

EXHIBIT LIST & SIGNATURE PAGE

YES	N/A	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Exhibit A: Scope of Services
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Exhibit B: Monitoring, Evaluation, and Reporting Requirements
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Exhibit C: Budget Summary
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Exhibit D: Payments to GRANTEE and Reporting Schedule
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Exhibit E: General GRANT Provisions
<input type="checkbox"/>	<input checked="" 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

* applicable if GRANTEE employees or volunteers perform services in a position i) having supervisory or disciplinary authority over minors; or ii) requiring contact with children, or as a food concessionaire or other similar licensed concessionaire.

The Exhibits and Certifications marked above are attached hereto and incorporated herein. I certify that I have read and hereby agree to comply with all the terms and provisions contained in this AGREEMENT, including without limitation, all Exhibits and Certifications.

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

“CITY”

**Form Approved by the Office of
the City Attorney**

CITY OF SAN JOSE, a municipal corporation

× Sarah Zarate
Sarah Zarate (11/10/2021)
Email: sarah.zarate@sanjoseca.gov

By _____
SARAH ZARATE
Director

**San Jose Downtown Association
“GRANTEE”**

× Rick Jensen
rjensen@sjdowntown.com (11/8/2021)
Email: rjensen@sjdowntown.com

By _____
Name: Rick Jensen

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This AGREEMENT is made by and between the CITY OF SAN JOSE, a municipal corporation (hereinafter "CITY"), and the person or entity identified as GRANTEE on the SUMMARY PAGE at the beginning of this AGREEMENT (hereinafter "GRANTEE").

THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1: RECITALS

- A. On March 11, 2021, President Biden signed the American Rescue Plan Act, that includes direct funding to Cities and States. The City of San José received \$212.3 million under the bill's Coronavirus State and Local Fiscal Recovery Fund.
- B. On June 15, 2021, Mayor Sam Liccardo, in his Fiscal Year 2021-2022 June Budget Message, authorized the changes proposed in the City Manager's Budget Addenda to be incorporated in the Adopted Budget.
- C. Manager's Budget Addendum #16, released on May 25, 2021, provides an allocation of \$2.2 million from the American Rescue Plan Act (ARPA) State and Local Fiscal Recovery Funds to supplement arts and cultural grants funding for programs at the threat of closure or which have experienced revenue declines due to decreased Transient Occupancy Tax revenue attributable to the economic impacts of Covid-19.
- D. CITY desires to partially fund arts and cultural services from GRANTEE.
- E. GRANTEE has the necessary professional expertise and skill and is qualified to perform such services.
- F. The purpose of this AGREEMENT is to retain GRANTEE to perform those services specified in EXHIBIT A of this AGREEMENT.
- G. CITY's Cultural Affairs Director ("DIRECTOR"), including the DIRECTOR's authorized designees, are charged with the administration of this AGREEMENT.
- H. These Recitals are incorporated and made a part of this AGREEMENT.

SECTION 2: PROGRAM COORDINATION

- A. **CITY:** CITY's 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. Such person is identified on the SUMMARY PAGE as GRANTEE CONTACT PERSON. Additionally, GRANTEE shall immediately notify CITY in writing should circumstances or conditions subsequent to the execution of this AGREEMENT require a substitute GRANTEE

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CONTACT PERSON. GRANTEE's CONTACT PERSON and GRANTEE staff will fully cooperate with the DIRECTOR relating to the work or services provided hereunder.

SECTION 3: SCOPE OF SERVICES

GRANTEE shall perform those services as specified in **EXHIBIT A** entitled "Scope of Services," ("SERVICES"), which is attached hereto and incorporated herein.

SECTION 4: TERM OF AGREEMENT

The term of this AGREEMENT shall commence on the Start Date and shall expire on the End Date as set forth in the SUMMARY PAGE, unless extended or sooner terminated in accordance with Section 10 of this AGREEMENT, entitled "TERMINATION". Regardless of the date of execution of this AGREEMENT, it is effective as of the Start Date. GRANTEE shall not receive payment for work performed prior to the Start Date.

SECTION 5: COMPENSATION

- A. CITY agrees to pay GRANTEE for SERVICES an amount not to exceed the amount set forth on the SUMMARY PAGE ("COMPENSATION AMOUNT"), subject to the terms and conditions set forth in **EXHIBITS C** and **D** entitled "Budget Summary" and "Payments to GRANTEE and Reporting Schedule," which are attached hereto and incorporated herein.
- 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. Pursuant to Section 12 below, neither CITY nor GRANTEE shall make any payments in violation of any law existing during the term of this Agreement including, but not limited to, any maximum amount of administrative fee(s). In the event any such payments are made by the CITY, GRANTEE will refund to CITY any such payments which were made in violation of law.
- D. GRANTEE shall comply with all of the terms and conditions of this AGREEMENT, including the SUMMARY PAGE and all Exhibits and Certifications attached hereto. If GRANTEE fails to comply with any of the terms and conditions of this AGREEMENT, including the SUMMARY PAGE and all Exhibits and Certifications attached hereto, GRANTEE shall reimburse CITY from sources other than those received from CITY.
- E. CITY shall pay GRANTEE for expenditures claimed to be allowable within forty-five (45) days after timely receipt of GRANTEE's properly completed and documented invoice, or as soon thereafter as is reasonable, provided GRANTEE complies with all terms and conditions of this AGREEMENT. No such payment shall mean or imply that CITY has made a final determination that an expenditure(s) by GRANTEE is allowable; nor shall any such payment waive or otherwise limit the rights of federal, state or CITY representatives to review GRANTEE's records and recover from GRANTEE payments which are not allowable.

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- F. DIRECTOR 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 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) has 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 SERVICES.
 3. If GRANTEE, without having obtained CITY approval, has taken any action pertaining to SERVICES which requires CITY approval.
 4. If GRANTEE makes improper use of the COMPENSATION AMOUNT.
 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 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: INDEPENDENT CONTRACTOR

It is understood and agreed 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.

It is understood and agreed that GRANTEE and GRANTEE's employees, in the performance of this AGREEMENT, shall act as and be an independent GRANTEE and not an agent or employee of CITY, and as an independent CONTRACTOR, GRANTEE shall obtain no rights to retirement benefits or other benefits which accrue to CITY's employees, and GRANTEE and GRANTEE's employees hereby expressly waive any claim it/they may have to any such rights.

SECTION 7: SUBCONTRACTING/ASSIGNABILITY

The parties agree that the expertise and experience of GRANTEE are material considerations for this AGREEMENT. GRANTEE shall not assign or transfer any interest in this AGREEMENT nor the performance of any of GRANTEE's obligations hereunder, without the prior written consent of CITY. In the event CITY determines that any of the rights, duties or obligations under

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this AGREEMENT have been subcontracted or assigned to another vendor or GRANTEE by GRANTEE, without the written consent of CITY, then CITY may exercise its right to take any appropriate remedy identified in Section 10, entitled "TERMINATION", including without limitation, termination of the entire AGREEMENT.

GRANTEE'S subcontracts that involve the exchange of funds shall detail the correlation between the services to be provided and the contract goals to be met.

SECTION 8: INDEMNIFICATION AND HOLD HARMLESS

GRANTEE shall defend, indemnify and hold harmless CITY, its officers, employees and agents against any claim, loss, or liability arising out of or resulting in any way from work performed under this AGREEMENT due to the willful or negligent acts (active or passive) or omissions by GRANTEE's officers, employees or agents. The acceptance of said services and duties by CITY shall not operate as a waiver of such right of indemnification. GRANTEE's obligations under this indemnification provision shall survive the expiration or termination of this AGREEMENT.

SECTION 9: INSURANCE

GRANTEE agrees to have and maintain the policies set forth in **EXHIBIT G**, entitled "INSURANCE" which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by CITY's Risk Manager as to form and content. These requirements are subject to amendment or waiver if so approved in writing by Risk Manager. GRANTEE agrees to provide CITY with a copy of said policies, certificates and/or endorsements no later than two weeks prior to the event or program dates described in **EXHIBIT A** under this AGREEMENT.

SECTION 10: TERMINATION

This AGREEMENT may be terminated in whole or in part under any of the following circumstances:

- A. Termination for Convenience. CITY may, through DIRECTOR, terminate this AGREEMENT without cause by giving GRANTEE thirty (30) calendar days written notice.
- B. Termination for Cause. 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 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

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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 COMPENSATION AMOUNT.
- C. Termination for Unavailability of Funds. In the event of reduction, suspension, discontinuance or other unavailability of funds, CITY unilaterally may take appropriate action(s) including, but not limited to, immediately canceling or reducing existing service authorization, stopping or reducing further referrals of individuals, and/or reducing the maximum dollar amount of this AGREEMENT. CITY shall give GRANTEE no less than sixty (60) business days' advance written notice of the action(s) CITY intends to take as a result of the unavailability of funds. CITY shall not be liable for start-up costs, or lost profits in the event of early termination.
- D. 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 COMPENSATION AMOUNT, including interest accrued, except that GRANTEE shall have no obligation to refund to CITY any portion of the COMPENSATION AMOUNT spent as of the date of termination in accordance with the terms of the AGREEMENT. GRANTEE shall also provide CITY with a written report detailing the expenditures, if any, from the COMPENSATION AMOUNT, including an accounting of its administrative expenses to 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 COMPENSATION AMOUNT 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.
 2. Upon termination, GRANTEE shall immediately deliver to CITY any and all copies of materials used or developed including, but not limited to, all data collection forms, reports, studies and other work performed, whether or not completed by GRANTEE or GRANTEE's subcontractor, if any, under this AGREEMENT.
- E. CITY's DIRECTOR is authorized to terminate this AGREEMENT on CITY's behalf.
- F. 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.
- G. CITY may, at its sole option, pursue a course correction process with GRANTEE to address issues with GRANTEE's performance under this AGREEMENT. However, CITY

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is under no obligation to pursue a course correction prior to exercising its rights to suspend payment to GRANTEE or to terminate this AGREEMENT. Nothing in this AGREEMENT shall be construed so as to deprive CITY of its rights and remedies at law or in equity against GRANTEE.

SECTION 11: GOVERNING LAW / 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 12: COMPLIANCE WITH LAWS; CONFLICT OF TERMS

GRANTEE shall comply with the applicable requirements of the American Rescue Plan Act (ARPA), and with applicable regulations, policies, guidelines, Office of Management and Budget (OMB) circulars, and field memoranda promulgated by United States Department of Labor (DOL), the State of California and CITY, and/or any legislation which may replace the ARPA, and all other applicable federal, state and local rules, regulations and laws. Moreover, neither CITY nor GRANTEE shall make any payments that would be in violation of any law existing during the term of this Agreement, including but not limited to any maximum amount of administrative fee(s). Without limiting the generality of the preceding sentence, GRANTEE shall comply with the provisions of CITY's Business Tax Ordinance in Chapter 4.76 of the San José Municipal Code.

SECTION 13: ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY

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: <https://www.sanjoseca.gov/your-government/environment/business-school-resources/for-schools/environmentally-preferable-procurement> .

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

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

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SECTION 14: INTENTIONALLY OMITTED

SECTION 15: RECORDS

GRANTEE shall be solely responsible to implement internal controls and record keeping procedures that comply with this AGREEMENT and all applicable laws. GRANTEE's administrative, programmatic and financial records pertaining to the Program, or the AGREEMENT collectively, must sufficiently support the determination that expenditures are allowable. GRANTEE shall retain all records pertinent to this AGREEMENT for a period of five (5) years from the date of final payment for each fiscal year. GRANTEE shall retain such records beyond five (5) years so long as any litigation, audit, dispute or claim is pending.

SECTION 16: MONITORING/AUDITS

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.

GRANTEE shall comply with any audits by appropriate monitoring agencies at GRANTEE's sole expense. The CITY shall monitor the GRANTEE a minimum of once per year, which shall include a desk review and an annual site visit. GRANTEE shall submit an audit report within thirty (30) days in the event the AGREEMENT is terminated, voluntarily or involuntarily, before the end of the term. GRANTEE shall pay to CITY, from neither CITY nor federal funds, the full amount of liability resulting from disallowances or other audit or monitoring exceptions which are attributed to GRANTEE's error, omission, or violation of any provision of this AGREEMENT.

EXHIBIT B, "MONITORING, EVALUATION AND REPORTING REQUIREMENTS" sets forth additional standards regarding the CITY's right to audit, and GRANTEE's obligation to deliver to the CITY reports which may include audited financial reports. 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 as specified in **EXHIBIT B**.

SECTION 17: WAIVER

GRANTEE agrees that waiver by CITY of any breach or violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by CITY of the performance of any work or services by GRANTEE shall not be deemed to be a waiver of any term or condition of this AGREEMENT.

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SECTION 18: CONFLICT OF INTEREST

GRANTEE shall avoid all conflict of interest or appearance of conflict of interest in performance of this AGREEMENT. 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 19: 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 10 of this AGREEMENT.

SECTION 20: DISQUALIFICATION OF FORMER EMPLOYEES

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

SECTION 21: NOTICES

All notices and other communications required or permitted to be given under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, to the respective parties addressed as referenced on the SUMMARY PAGE of this AGREEMENT.

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

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SECTION 22: CITY ACKNOWLEDGMENT

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

SECTION 23. INTERPRETATION, PRIOR AGREEMENTS AND AMENDMENTS

This AGREEMENT, including the SUMMARY PAGE and all Exhibits and Certifications attached hereto, represents the entire understanding of the parties as to those matters contained herein. In the event that the terms specified in the SUMMARY PAGE or any of the Exhibits and Certifications attached hereto conflict with any of the terms specified in the body of this AGREEMENT, the terms specified in the body of this AGREEMENT shall control. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may be modified only by a written amendment duly executed by the authorized representative of the respective parties to this AGREEMENT.

SECTION 24. NO THIRD PARTY RIGHTS

This AGREEMENT does not constitute a binding commitment to any client or agency except CITY and GRANTEE. No third party rights are created for clients or other individuals.

SECTION 25: 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 10 as related to repayment of the COMPENSATION AMOUNT shall apply.

SECTION 26: 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 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

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California Public Resources Code Sections 5164. GRANTEE shall fully indemnify, defend, and hold harmless CITY for any such hiring. GRANTEE shall notify CITY in writing of any violation of this provision as soon as is reasonably practicable.

- C. GRANTEE shall also not employ any person who is permitted to provide services requiring contact with children or providing food concessionaire services or other licensed concessionaire services in that area, unless GRANTEE has complied with the tuberculosis 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 of the end of the organization'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 submitted to the Workforce Development Board and posted on the organization's website at an easy access location. All audits must be performed by a certified public accountant currently licensed to practice in the State of California, must conform to generally accepted auditing standards and otherwise be in a form acceptable to the CITY.
- B. Non-profits shall be required to comply with this requirement at the time that the non-profit has entered into one or more grant agreements or subsidy agreements with the CITY 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 amendments 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.

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- C. This posting requirement shall remain in effect until an entire fiscal year passes in which the non-profit does not have contracts with the CITY 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 \$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 (6) months from the end of GRANTEE's Fiscal Year.

SECTION 29: EXECUTION IN COUNTERPARTS.

This AGREEMENT may be executed in any number of counterparts and by each party in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

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EXHIBIT A

SCOPE OF SERVICES

GRANTEE will provide the services as described in this EXHIBIT.

A. Period of Service

The Grant Services will commence on the Start Date and shall expire on the End Date as set forth in the SUMMARY PAGE.

B. Location of Services

Venues in San Jose.

C. Projected Number of Participants

See D below.

D. Services (Description of Event or Program)

Grant to support SoFA Street Fairs 2021-2022 during September 2021 and April 2022 in the SoFA District. Projected attendance is TBD due to year-long closures due to COVID19.

E. Program Performance Outcomes

Implementation of event/performance as described in EXHIBIT A: Scope of Services		

F. CITY's Project Coordinator

Kerry Adams Hapner, Director of Cultural Affairs

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EXHIBIT B

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. Document all costs by maintaining complete and accurate records of all financial transactions, including but not limited to, contracts, invoices, cash receipts, vouchers,, bank statements and/or other official documentation, evidencing in proper detail the nature and propriety of all charges.
3. 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. Reporting.

1. GRANTEE will 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 all matters covered by this Agreement.
2. GRANTEE shall submit a final report to CITY Program Coordinator within 90 days after the end of the event that will include:
 - o An accounting of actual expenses and income from all sources for the services described in Exhibit A: Scope of Services.
 - o Exhibit A activities implemented, and actual public participation or attendance.
 - o Samples of promotional materials related to the event, clearly indicating the required acknowledgment of City support as indicated in Exhibit E, entitled "General Service Requirements."
3. GRANTEE shall assist CITY in meeting any reporting requirements to the State and other agencies.
4. GRANTEE shall also promptly advise the CITY of any notice of any violation of local, State, or Federal law or regulation, including but not limited to: 1) the issuance of any legal complaint by an enforcement agency, or any enforcement proceedings by any Federal, State or local agency for alleged violations of Federal, State or local rules, regulations or laws; and/or 2) the issuance of citations, court findings or administrative findings for violations of applicable Federal, State or local rules, regulations or laws.

C. Evaluation of GRANTEE.

Authorized Federal, State, and CITY representatives shall have the right to monitor, assess, or evaluate GRANTEE's performance pursuant to this AGREEMENT by any means including, but not limited to, inspections of premises, records, reports, audits and interviews with GRANTEE staff and participants.

CITY performance evaluation and monitoring may, at CITY's discretion, take place virtually by means of CITY monitor(s) reviewing submitted monthly update reports. CITY may at its sole discretion, request back up documentation for any GRANTS.

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D. Records 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 five(5) years from the expiration date of 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 five (5) years from the date of any resulting final settlement.
 - d. 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
 - e. for a period of five (5) years after final payment under this Agreement; or,
 - f. for such longer period as may be required by applicable law; or
 - g. if this Agreement is completely or partially terminated, for a period of five (5) years from the date of any resulting settlement.
3. Audits.
 - a. GRANTEE agrees to satisfy the audit requirements for sub-recipients of federal financial assistance in accordance with applicable OMB Circular(s) and Federal Register publications.
 - b. GRANTEE shall submit an audit report within one (1) month in the event the AGREEMENT is terminated, voluntarily or involuntarily, before the end of the term.
 - c. GRANTEE, at its own expense, shall accept responsibility for receiving, responding to and complying with any audit exceptions by appropriate monitoring agencies.

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GRANTEE shall also fully cooperate as requested by CITY in any audit or monitoring related process including, but not limited to, the provision of adequate staff for organizing GRANTEE records and testimony at any related administrative or court proceedings.

- d. GRANTEE shall pay to CITY, from neither CITY nor Program funds, the full amount of liability resulting from disallowance or other audit or monitoring exceptions which are attributed to GRANTEE's error, omission, or violation of any provision of this Agreement.
- e. GRANTEE shall, at CITY's option and at GRANTEE's sole cost, defend, indemnify, hold harmless against any claim or liability for such costs, and shall cooperate fully with CITY by providing all witnesses, documents and other information requested by the CITY in any civil court proceeding or any formal or informal administrative proceeding conducted in connection with such costs.

4. Independent Audit Reports.

- a. If GRANTEE expends \$750,000 or more in a year in Federal funds, 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.
 - a. The audit report shall ascertain and determine 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.
 - b. 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 the 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.
 - c. 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.
 - d. 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.
 - e. The GRANTEE shall submit to the City copies of management letters the auditor prepares for the GRANTEE as part of the audit engagement.
 - f. All audits must be performed by Certified Public Accountants currently certified and licensed to practice in the State of California. GRANTEE must

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have Auditor's proof of current licensing on file in GRANTEE's office. GRANTEE must submit to the CITY, a copy of Auditor's certification to practice in California with the audit.

5. 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.

6. Disallowed Costs. GRANTEE is liable for repayment of disallowed costs as determined by CITY. GRANTEE shall make best effort to recover disallowed costs due to unallowable use of GRANT by GRANTEE. 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.

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EXHIBIT C

BUDGET SUMMARY

PROJECT SOURCE OF FUNDS			
List ALL funding sources for project			
Funding Source: Program/Agency	OED/OCA	Use of Funds	Amount (\$)
<i>American Rescue Plan Act (ARPA) Funding</i>		See EXHIBIT A	<i>\$11,500</i>
<i>ARPA funding to support loss of TOT funding for OCA Grant Programs</i>			
Total			\$11,500

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EXHIBIT D

PAYMENTS TO GRANTEE AND REPORTING SCHEDULE

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

A. Maximum Amount of Compensation

The total grant amount ("Grant Award") awarded to GRANTEE shall not exceed **\$11,500** or 50 percent of the expense of the Event, whichever is less. The Grant Award shall be used and expended by GRANTEE for the purposes specified in this AGREEMENT and for no other purposes. The Grant Award shall be disbursed to GRANTEE as follows:

1. CITY shall pay GRANTEE, upon execution of this AGREEMENT and subject to the conditions in this EXHIBIT, the full Grant Award of \$11,500. GRANTEE shall expend the Grant Award for expenses related to the Event and not for any previous year's deficit, or for administrative costs unrelated to the Grant Plan or for any capital equipment purchase. GRANTEE agrees that if GRANTEE uses the Grant Award for any previous year's deficit, administrative costs unrelated to Exhibit A: Scope of Services or for any capital equipment purchase, GRANTEE shall be in breach of this AGREEMENT. GRANTEE agrees to reimburse CITY for these expenditures on demand of CITY.
2. If total documented expenses of the Event Report are under 50 percent of the total cost of the Event, GRANTEE shall return to the CITY any amount received in excess of 50 percent of the total cost of the event.

Certification Required for Fiscal Reports or Invoices. Pursuant to 2 C.F.R. §200.415, annual and final fiscal reports or vouchers requesting payment under this AGREEMENT must include a certification, signed by an official who is authorized to legally bind GRANTEE, which reads as follows: "By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729–3730 and 3801–3812)."

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EXHIBIT E

GENERAL GRANT PROVISIONS

A. Non-Discrimination.

GRANTEE is prohibited from discriminating on the ground of race, color, creed, religion, sex, sexual orientation, actual or perceived gender identity, marital status, family status (minor children or no minor children), national origin, ancestry, age, disability, political affiliation or belief, and for participants only, citizenship or participation in programs or activities funded under this AGREEMENT, in admission or access to, opportunity or treatment in, or employment in the administration of, or in connection with, any program or activity funded under this AGREEMENT.

As a condition to the award of financial payment under this Program, GRANTEE assures, with respect to operation of this funded Program or activity and all agreements or arrangements to carry out this Program or activity, that it will comply fully with all nondiscrimination and equal opportunity statutes and regulations including, but not limited to, the following: Title VI and VII of the Civil Rights Act of 1964, as amended; Americans with Disabilities Act of 1990, as amended; Section 504 of the Rehabilitation Act of 1973; Title IX of the Education Amendments of 1972; Age Discrimination Act of 1975; California Fair Employment and Housing Act, Government Code Sections 12900 et seq.; California Labor Code Sections 1101, 1102, and 1102.5; Executive Orders 11246 and 11375 supplemented in Department of Labor Regulation 41 C.F.R. Part 60; 29 C.F.R. Part 37, and with all applicable requirements imposed by or pursuant to regulations implementing those laws. Federal, state, and local governments shall have the right to seek judicial enforcement of this nondiscrimination assurance.

B. Accessibility.

GRANTEE shall comply with all applicable laws and regulations including, without limitation, the Americans with Disabilities Act (ADA), as it applies to GRANTEE, and those laws that govern health and safety and prevention of unhealthy conditions.

C. Prohibited Activities; Debarment and Suspension; Lobbying Restrictions.

GRANTEE shall comply with the applicable federal regulations prohibiting activities relating to political lobbying, sectarian, and pro- or anti- unionization activities. GRANTEE shall also comply with reporting requirements related to fraud, abuse, or criminal activities and certifications regarding lobbying (CERTIFICATION 1.2); and debarment, suspension and other related matters (CERTIFICATION 1.1), to the extent these are applicable and in accordance with Executive Orders 12549 and 12689.

D. Drug-Free Workplace.

GRANTEE assures and certifies under penalty of perjury that it will comply with the requirements of the government-wide requirements for a drug-free workplace codified in DOL Regulations, including but not limited to, 29 C.F.R. Part 94 and the State of California's Drug-Free Workplace Act of 1990 (Government Code §§ 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and

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specifying actions to be taken against employees for violations, as required by Government Code § 8355(a)(1).

2. Establish a Drug-Free Awareness Program as required by Government Code § 8355(a)(2) to inform employees about all of the following:
 - a. The dangers of drug abuse in the workplace;
 - b. GRANTEE's policy of maintaining a drug-free workplace;
 - c. Any available counseling, rehabilitation and employee assistance programs; and
 - d. Penalties that may be imposed upon employees for drug abuse violations.

3. Provide, as required by Government Code § 8355(a)(3), that every employee who works on this Agreement:
 - a. Will receive a copy of GRANTEE's drug-free policy statement; and
 - b. Will agree to abide by the terms of GRANTEE's statement as a condition of employment.

4. Failure to comply with these requirements may result in suspension of payments under this Agreement or termination of this Agreement or both, and GRANTEE may be ineligible for award of future agreements if CITY determines that any of the following has occurred:
 - a. False certification; or
 - b. Violation of the certification by failing to carry out the requirements as noted above.

E. Environmental Compliance.

GRANTEE shall comply with all applicable standards, orders, and requirements relating to energy efficiency contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871), Section 306 of the Clean Air Act (42 U.S.C. § 7606), Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency Regulations (40 C.F.R. Part 31).

F. Federal Ownership of Materials/Copyrights.

The federal government reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal government purposes: (1) the copyright in any work developed under this AGREEMENT; and (2) any rights of copyright to which GRANTEE purchases ownership with CARES grant funds received under this AGREEMENT. Further, the federal, State, and CITY governments shall have access to any report, preliminary findings or data assembled by GRANTEE under this AGREEMENT and the federal government shall retain ownership and patent rights to any discovery or invention under this AGREEMENT, as provided in 29 C.F.R. Section 95.48, Appendix A-5, 29 C.F.R. Section 97.34, and 29 C.F.R. Section 97.36(i)(8)-(9).

G. Buy American.

GRANTEE agrees that in expending the COMPENSATION AMOUNT it will comply with the Buy American Act (41 U.S.C. §§ 8301 et seq.).

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H. Salary and Bonus Limitations.

In compliance with Public Law 109-234, none of the funds appropriated in Public Law 109-149 or prior Acts under the heading "Employment and Training" that are available for expenditure on or after June 15, 2006, shall be used by a recipient or sub recipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II, except as provided for under section 101 of Public Law 109-149. This limitation shall not apply to GRANTEEES providing goods and services as defined in OMB Circular A-133. Where states are recipients of such funds, states may establish a lower limit for salaries and bonuses of those receiving salaries and bonuses from sub recipients of such funds, taking into account factors including the relative cost-of-living in the states and the compensation levels for programs involved including Employment and Training Administration programs. See Training and Employment Guidance Letter number 5-06 for further clarification.

The incurrence of costs and receiving reimbursement for these costs under this award certifies that your organization has read the above special condition and is in compliance.

I. Financial Provisions.

1. Allowable Expenses.

CITY shall not be obligated under this AGREEMENT to reimburse GRANTEE for any expense that is not allowable. Allowable shall mean that the expense is: a) actually incurred by GRANTEE; b) reasonable and necessary for the purpose of providing services; d) permitted in the budget; and e) authorized and permitted under federal, State and local laws and regulations.

2. Financial System.

GRANTEE shall establish and maintain a system of financial record keeping which complies with applicable laws, rules and regulations, and with generally accepted accounting principles relevant to entities receiving federal funds.

GRANTEE shall maintain financial records adequate to show that funds paid under the AGREEMENT were used for purposes consistent with the terms of the AGREEMENT.

3. Interest Income.

Interest earned by GRANTEE on funds received under this AGREEMENT shall be Program Income ("Program Income"). No part of the funds received shall be commingled with other funds or used to support other programs.

4. Program Income.

GRANTEE shall use all Program Income to support case management and related services, and shall separately account for it in compliance with the 29 C.F.R. Section 95.24 (Nongovernmental Grantees) and 29 C.F.R. Section 97.25 (Governmental Grantees). 20 C.F.R. Section 667.200(a)(5) requires the addition method to be used for Program Income earned under federal grants. Any Program Income not used and accounted for shall be returned to the CITY upon termination of this AGREEMENT.

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5. Adequate Financial Resources.

GRANTEE shall have available non-federal resources, and resources other than those received from the CITY, readily convertible to cash in an amount to repay CITY all disallowed costs incurred in connection with this AGREEMENT, which resources shall be accessible to CITY during the entire retention period, and for one (1) year thereafter.

Federal Fund Provisions

GRANTEE is referred to under this provision as "Contractor".

In addition to all the other terms and conditions of this AGREEMENT, Contractor agrees to comply with the following Federal Fund provisions in performing the AGREEMENT. If any of these Federal Fund provisions conflict with any other provisions of this AGREEMENT, the Federal Fund provisions will take precedence unless the other provision is more restrictive, in which case the other provision will control as required under Section 12 above.

A. Federal Equal Employment Opportunity (41 C.F.R. Section 60-1.4(b))

In addition to the other nondiscrimination provisions in this AGREEMENT, Contractor will comply with the following:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
3. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

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5. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this AGREEMENT or with any of the said rules, regulations, or orders, this AGREEMENT may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

B. Copeland "Anti-Kickback"

1. **Contractor.** The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Agreement.
2. **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
3. **Breach.** A breach of the AGREEMENT clauses above may be grounds for termination of the AGREEMENT, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12."

C. Contractor Work Hours and Safety Standards Act.

If the amount of this AGREEMENT exceeds \$100,000, Contractor will comply with the following in addition to any other labor requirements in the AGREEMENT:

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1. **Overtime requirements.** No contractor or subcontractor contracting for any part of the AGREEMENT work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
3. **Withholding for unpaid wages and liquidated damages.** The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

D. Federal Clean Air Act Requirements

If the amount of this AGREEMENT exceeds \$150,000, Contractor will comply with the following:

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq.*
2. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the State of California, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

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3. The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

E. Federal Water Pollution Act Requirements

If the amount of this AGREEMENT exceeds \$150,000, Contractor will comply with the following:

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, et seq.).
2. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the State of California, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

F. Energy Efficiency/Conservation (44 C.F.R. § 13.36(i)(13))

Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

G. Suspension and Debarment

Contractor will comply with the following provision:

1. This AGREEMENT is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
2. The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
3. This certification is a material representation of fact relied upon by the City. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City and the State of California, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
4. The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The

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Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Contractor certifies that it is not listed as debarred, suspended, or otherwise excluded by agencies on the governmentwide exclusions in the System for Award Management (www.sam.gov).



rjensen@sjdowntown.com (11/8/2021)
Email: rjensen@sjdowntown.com

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

H. Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352 (as amended))

A Contractor who applies or bids for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the City.

I. Use of Recovered/Recycled Materials

In the performance of this AGREEMENT, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

1. Competitively within a timeframe providing for compliance with the Agreement performance schedule;
2. Meeting AGREEMENT performance requirements; or
3. At a reasonable price.

Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

J. Subcontracting

In addition to all other subcontracting provisions, Contractor shall comply with the following:

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1. **Subcontractor Compliance:** The Contractor shall place in any subcontractor agreement the requirement that the subcontractor and all lower tier subcontractors comply with all the terms and conditions of this Agreement, including the Federal Funding requirements.

2. **Small and Minority Businesses, Women-Owned Businesses, and Labor Surplus Area Firms:** If the Contractor is authorized by this Agreement to use subcontractors, the Contractor warrants that it took the following affirmative steps, and that it has retained documentation of these steps:
 - Made reasonable efforts to identify (including using outside entities that specialize in this area) and place qualified small, minority, and women-owned business on subcontractor solicitation list(s) for this AGREEMENT;
 - Made reasonable efforts to solicit the businesses on the list as subcontractors for this AGREEMENT;
 - Divided the scope of work to be subcontracted, when economically feasible, into smaller tasks or quantities to permit maximum participation by qualified small, minority, and women-owned business; and
 - Made reasonable efforts to establish delivery schedules for subcontracted work, where requirements permit and it is otherwise appropriate, which encourage qualified small, minority, and women-owned business to respond subcontractor solicitations; and

If at any time during the term of the AGREEMENT the Contractor seeks and obtains authorization to use subcontractors to complete any of the scope of work, the Contractor shall take the affirmative steps listed above when selecting the subcontractor and will maintain documentation of all such efforts.

K. Notice of Federal Funding Reporting Requirements and Regulations

In addition to all other reporting requirements in the AGREEMENT, Contractor agrees to comply with the following:

1. **General.** The City is using Federal grant funding to pay, in whole or in part, for the costs incurred under this Agreement. As a condition of Federal grant funding, the Federal government requires various financial and performance reporting.
 - a. It is important that the Contractor is aware of these reporting requirements, as the City may require the Contractor to provide certain information, documentation, and other reporting in order to satisfy reporting requirements to the State of California or Federal Agency.
 - b. Failure of City or State of California to satisfy reporting requirements to Federal funding is a material breach and could result in loss of Federal financial assistance awarded to fund this Agreement.

2. **Applicable Regulations and Policy.** The applicable regulations, FEMA policy, and other sources setting forth these reporting requirements are as follows:

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- a. 44 C.F.R. § 13.40 (Monitoring and Reporting Program Performance)
- b. 44 C.F.R. § 13.41 (Financial Reporting)
- c. 44 C.F.R. § 13.50(b) (Reports)
- d. 44 C.F.R. § 206.204(f) (Progress Reports)
- e. FEMA Standard Operating Procedure No. 9570.14, *Public Assistance Program Management and Grant Closeout Standard Operating Procedure* (Dec. 2013, as may be amended)
- f. FEMA-State Agreement

3. Financial Reporting. The State of California is required to submit the following financial reports to FEMA:

- a. **Initial Report.** An initial Federal Financial Report (SF 425) no later than 30 days after FEMA has approved the first Public Assistance project.
- b. **Quarterly Reports.** Following submission of the initial report, quarterly Federal Financial Reports until submission of the final report described in the following subparagraph. Reports are due on January 30, April 30, July 30, and October 30.
- c. **Final Report.** A final Federal Financial Report within 90 days of the end of the period of performance for the Public Assistance grant.

4. Performance Reporting. The State of California is required to submit the following financial reports to FEMA:

- a. **Initial Report.** An initial performance report no later than 30 days after FEMA has approved the first Public Assistance project.
- b. **Quarterly Reports.** Following submission of the initial report, quarterly performance reports until submission of the final report described in the following subparagraph. Reports are due on January 30, April 30, July 30, and October 30.
- c. **Final Report.** A final performance report within 90 days of the end of the period of performance for the Public Assistance grant.

L. Access to Records (44 C.F.R. § 13.36(i)(10))

In addition to all other provisions regarding records in this Agreement, Contractor agrees to comply with the following:

- 1. The Contractor agrees to provide the City, the State of California, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.

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2. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. The Contractor agrees to provide the FEMA Administrator or his/her authorized representatives access to construction or other work sites pertaining to the work being completed under the AGREEMENT.
4. In compliance with the Disaster Recovery Act of 2018, the Contractor acknowledges and agrees that no language in this Agreement is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

M. Retention of Records (44 C.F.R. § 13.36(i)(11))

In addition to all other records retention requirements in this AGREEMENT, Contractor agrees to comply with the following:

The Contractor agrees to maintain all books, records, accounts and reports required under this AGREEMENT for a period of not less than 3 years after the date of termination or expiration of this AGREEMENT, except in the event of litigation or settlement of claims arising from the performance of this AGREEMENT, in which case Contractor agrees to maintain same until the City, State of California, the FEMA Administrator, the Comptroller General of the United States, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related to the litigation or settlement of claims.

N. DHS Seal, Logo, and Flags

The Contractor shall not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likeness of DHS agency officials without specific FEMA pre-approval.

O. No Obligation by Federal Government

The Federal Government is not a party to this AGREEMENT and is not subject to any obligations or liabilities to the City, Contractor, or any other party pertaining to any matter resulting from the Agreement.

P. Compliance with Law

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the AGREEMENT. The Contractor will comply with all applicable local, state, and Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

Q. Termination and Remedies

1. **For Convenience:** The City may terminate this AGREEMENT at any time and for any reason by giving the Contractor written notice of the termination. The written notice must set forth the effective date of the termination, which must be at least 7 business days' after the date of the written notice.
2. **For Cause:** The City may terminate this AGREEMENT immediately upon written

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notice for any material breach by the Contractor. If the City terminates the AGREEMENT for cause and obtains the same services from another contractor at a greater cost, the Contractor is responsible for such excess cost in addition to any other remedies available to the City.

3. **Delivery of Work:** If the City terminates the AGREEMENT – whether for convenience or for cause – the City has the option of requiring the Contractor to provide to the City any finished or unfinished work product prepared by the Contractor up to the date of Contractor’s receipt of the written notice of termination.
4. **Compensation:** The City will pay the Contractor the reasonable value of services satisfactorily rendered by the Contractor to the City up to the date of Contractor’s receipt of the written notice of termination. For services to be “satisfactorily rendered,” the City must determine that the Contractor provided them in accordance with the terms and conditions of this Agreement. The City will determine the reasonable value of satisfactorily rendered services based on the compensation agreed to by the Parties attached to this AGREEMENT.
5. **Receipt of Notice:** For purposes of this provision, the Contractor’s receipt of the written notice of termination will be determined based on the method of providing notice. The notice is effective: if e-mailed when sent provided the sender receives an acknowledgement from the intended recipient (e.g. return receipt, return e-mail, or other written acknowledgement); when personally delivered if personal service; and 3 calendar days after deposit in the United States mail, whichever occurs first.

R. Fraud and False or Fraudulent or Related Acts

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor’s actions pertaining to this AGREEMENT.

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**Attachment 1
Certification Regarding Lobbying**

CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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EXHIBIT F

Exhibit F is not applicable to this AGREEMENT.

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EXHIBIT G

INSURANCE

GRANTEE, at GRANTEE's sole cost and expense, shall procure and maintain for the duration of the Event(s) indicated in **Exhibit A**, entitled "SCOPE of SERVICES," the following insurance coverage against claims for injuries to persons or damages to property which may arise from or in connection with the GRANTEE's performances of the services hereunder by GRANTEE, its agents, representatives, employees or subcontractors. Certificate of Insurance is not needed upon execution of the AGREEMENT, but should be submitted two weeks prior to the event date(s) indicated in **Exhibit A**, entitled "SCOPE OF SERVICES."

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; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance.

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 and property damage. 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.

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 officer, 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

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- 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 emailed in pdf format to: Riskmgmt@sanjoseca.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

G. Subcontractors

GRANTEE shall include all consultants, contractors or subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each.