

**CITY OF SAN JOSE
GRANT AGREEMENT**

SUMMARY PAGE

This GRANT AGREEMENT (“AGREEMENT”) is entered into this 10th day of December, 2021 by the CITY OF SAN JOSE, a municipal corporation ("CITY") and THE SAN JOSE PUBLIC LIBRARY FOUNDATION, a California non-profit corporation (“GRANTEE”).

Dept. Contract No.: _____ CAO Document No.: _____

Grantee:

The San José Public Library Foundation
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Project:

Operating Support

Description:

Fundraising and community advocacy on behalf of the San José Public Library (“Library”).
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Funding Source:

Fund 418, Appn 0722 (\$50,000)
Fund 001, Appn 2704 (\$1,000,000)
Fund 402, Appn 217Z (\$500,000) American Rescue Plan Act (ARPA)
Fund 402, Appn 217V (\$298,000) American Rescue Plan Act (ARPA)

Grant Award Not to Exceed: \$1,848,000

Payment Terms: See Exhibit D

Agreement Term: Start Date: 07/01/2021 End Date: 06/30/2022

It is understood and agreed that GRANTEE has provided services prior to the execution of this AGREEMENT in anticipation of its execution. CITY accepts and approves the services provided by GRANTEE prior to the date of this AGREEMENT and agrees to compensate GRANTEE for those services in accordance with the terms of this AGREEMENT. However, in no event shall GRANTEE be compensated for work performed for CITY prior to July 1, 2021.

PARTIES TO AGREEMENT:

	GRANTEE	CITY OF SAN JOSE
Agency Name:	The San José Public Library Foundation	Library Department
Address for Legal Notice:	PO Box 611540	150 East San Fernando St.
City/State/Zip Code:	San José, CA 95161-1540	San José, CA 95112
Attention:	Dawn Coppin, Executive Director	Jill Bourne, City Librarian
Email Address:	dawn.coppin@sjplf.org	jill.bourne@sjlibrary.org
Telephone No.:	(408) 808-2174	(408) 808-2150
Fax No:	(408) 808-2133	(408) 808-2133
Taxpayer ID	77-0142379	
CITY Business License/ Tax No.:	8191441210	
Type of Entity:	501 (c) 3 – public benefit corporation.	
State of Incorporation or Residency:	California	

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CONTACT INFORMATION

GRANTEE CONTACT PERSON:	Dawn Coppin
Title:	Executive Director, SJPL Foundation
Telephone No:	408-808-2174
Fax No:	408-808-2133
Email:	dawn.coppin@sjplf.org

EXHIBIT LIST

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 type="checkbox"/>	<input checked="" type="checkbox"/>	Exhibit C: Budget Summary
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Exhibit D: Payments to GRANTEE
<input type="checkbox"/>	<input checked="" 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.)


<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 Requirements
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Exhibit H: Federal Funding Provisions

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

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

THE SAN JOSE PUBLIC LIBRARY FOUNDATION, a California non-profit corporation

GRANTEE Signature:  Dawn Coppin Date: _____
dawn.coppin@sjplf.org (12/8/2021)
Print Name: _____
Title: _____
Email: dawn.coppin@sjplf.org

CITY OF SAN JOSE, a
municipal corporation

 Sarah Zarate Date: _____
Sarah Zarate (12/10/2021)
Email: sarah.zarate@sanjoseca.gov
SARAH ZARATE
Director
City Manager's Office

APPROVED AS TO FORM:
AARON YU
Deputy City Attorney

 Date: _____
Aaron Yu (12/9/2021)
Email: aaron.yu@sanjoseca.gov



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This AGREEMENT is made and entered upon execution by CITY, by and between the CITY OF SAN JOSE, a municipal corporation of the State of California (hereinafter referred to as “CITY”), and the person or entity identified as GRANTEE on page 1 of the Summary Pages at the beginning of this AGREEMENT (hereinafter referred to as “GRANTEE”).

RECITALS

WHEREAS, CITY desires to fund grant services to be provided by GRANTEE; and

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

WHEREAS, 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, and

WHEREAS, on June 22, 2021, the City Council adopted Ordinance No. 30621 which authorized the use of funds from the American Rescue Plan Act for administrative support for the San José Aspires program and the San José Learns Initiative,

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

THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1: AUTHORITY AND STATUS OF GRANTEE

GRANTEE represents and warrants that the information contained in this AGREEMENT is true and accurate to the best of its knowledge; that it is a duly organized, validly existing nonprofit organization in good standing under the laws of the State of California; and that its signatory to this Agreement is the representative of the nonprofit organization and is authorized by resolution, bylaws, or constitution of the nonprofit organization, currently in full force and effect, to execute this AGREEMENT on GRANTEE’s behalf.

SECTION 2: PROGRAM COORDINATION

A. In administering the fundraising activities hereunder, GRANTEE is required to follow CITY’s guidelines and policies pertaining to fundraising. In all other respects, all of the GRANTEE’s fundraising efforts shall be under the direction of GRANTEE, and CITY shall not have any responsibility for, or control over, the actions of GRANTEE, its agents or its staff regarding fundraising activities.

B. The Library Department will manage and operate programs funded by GRANTEE. The Library Department will provide a written report annually to the GRANTEE, or as otherwise

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required by specific donors to GRANTEE which documents how GRANTEE funds were used by CITY, and if funds are restricted, used for the intended purpose.

C. GRANTEE shall identify a single representative who shall have overall responsibility for the progress and execution of this AGREEMENT. Such person is identified on the Summary Pages 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 CONTRACT MANAGER. GRANTEE's CONTRACT MANAGER and GRANTEE staff will fully cooperate with the CITY LIBRARIAN 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 Commencement Date.

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

C. CITY shall award the GRANTEE an amount not to exceed ONE MILLION EIGHT HUNDRED FORTY EIGHT DOLLARS (\$1,848,000). GRANTEE shall fundraise at a minimum TWO HUNDRED FIFTY THOUSAND (\$250,000) for the administrative fee of FIFTY THOUSAND DOLLARS (\$50,000). GRANTEE shall administer and serve as Fiscal Agent for the SJ Aspires Program for TWO HUNDRED NINETY EIGHT THOUSAND DOLLARS (\$298,000) to include a \$105,000 administrative fee in implementation as specified in **EXHIBIT D**, entitled "Payments to Grantee". GRANTEE shall administer and serve as Fiscal Agent for the SJ Learns Initiative Program for ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000) to include a 15% administrative fee in implementation as specified in **EXHIBIT D**, entitled "Payments to Grantee".

SECTION 4: GRANT SERVICES

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

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SECTION 5: USE OF LIBRARY FACILITIES

A. CITY hereby grants to GRANTEE the revocable right and privilege to hold fundraising events in the Dr. Martin Luther King, Jr. Library (“MLK”) space designated by the CITY or any branch library facility approved by the CITY. Terms for using MLK must abide by the terms set forth in the “AGREEMENT for Ownership and Operation of Joint Library Building between CITY and the Trustees of the California State University on behalf of San José State University”, referred to in this AGREEMENT as “Operating AGREEMENT”.

B. GRANTEE shall provide a five-day written advanced notice to the CITY in scheduling events and will be subject to review and consent of the CITY. All related costs incurred from the events will be absorbed by the GRANTEE, including but not limited to security staff.

SECTION 6: 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 D** entitled “Payments to GRANTEE.” Any costs incurred by GRANTEE above the Grant Award shall be at GRANTEE’s sole cost and expense.

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

C. CITY will review invoices or financial reports for adherence to AGREEMENT requirements and services, and CITY will authorize and release payment to GRANTEE based upon claims submitted and within twenty (20) calendar days from receipt of invoice or financial reports, provided that GRANTEE is not in default under any provisions of this AGREEMENT.

D. CITY will not pay for unauthorized services rendered by GRANTEE or for claimed services which GRANTEE has not provided as required by this AGREEMENT.

E. CITY LIBRARIAN 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;

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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 7: DEFAULT AND TERMINATION OF AGREEMENT

A. CITY may, through CITY LIBRARIAN, terminate this AGREEMENT without cause by giving GRANTEE thirty (30) calendar day's 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,

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

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 LIBRARIAN 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. If the funding required to pay for Grant Services for the next fiscal year has not been appropriated by June 30 of any year, this AGREEMENT will automatically terminate, effective June 30.

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

SECTION 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 CITY LIBRARIAN covering all revenues, costs, and expenditures with respect to GRANTEE's performance under this AGREEMENT.

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

SECTION 9: REPORTING REQUIREMENTS

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

SECTION 10: RIGHT OF EXAMINATION AND AUDIT AND PRESERVATION OF RECORDS

A. GRANTEE agrees that the CITY's Auditor, the CITY's Attorney or the CITY's Manager or any of their duly authorized representatives, upon reasonable advance notice to GRANTEE, shall have access and the right to audit, examine and make excerpts or transcripts of or from records, and to make audits of all contracts, subcontracts, invoices, payrolls, conditions of employment, materials and all other data or financial records relating to matters covered by this

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AGREEMENT, at any time during the term of this AGREEMENT. To the extent permitted by law, records pertaining to donors shall be treated and maintained as confidential records, with the ownership of such records vested in GRANTEE; provided, however, that CITY may, if needed, review records pertaining to donations to verify GRANTEE's performance of its obligations under this Grant AGREEMENT. Any such review shall be conducted at the office of GRANTEE with staff of GRANTEE present, and no documents or copies of documents pertaining to donors shall be removed from GRANTEE's office.

B. GRANTEE further agrees that such right of CITY to examine or audit shall continue for three (3) years after the expiration or termination of the AGREEMENT, or for such longer period, if any, as is required by applicable law. GRANTEE shall preserve and make available its records pertaining to its obligations under this AGREEMENT (a) until the expiration of three (3) years from the date of expiration or sooner termination of this AGREEMENT, or (b) for such longer period, if any, as is required by applicable law.

C. GRANTEE is responsible for repayment to CITY of any disallowed cost. Disallowed costs may be identified through audits, monitoring or other sources of information that become available to City.

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

SECTION 11: CITY ACKNOWLEDGMENT

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

SECTION 12: INSURANCE

GRANTEE agrees to have the policies set forth in the attached **EXHIBIT G**, entitled "INSURANCE" 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

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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 to either party shall be in writing and shall be either personally delivered or mailed in the United States mail, postage prepaid, facsimile, or by 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 adjustment 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.

D. For any funds provided through the American Rescue Plan Act (ARPA), GRANTEE shall comply with the applicable requirements 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 American Rescue Plan Act, 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

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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 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 provision nor 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 and any Exhibits incorporated herein, embodies the entire AGREEMENT between CITY and GRANTEE. No oral AGREEMENTs or

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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 represents familiarity with the local and state conflict of interest laws, and agrees to comply with those laws in performing this AGREEMENT. GRANTEE certifies that, as of the Contract Date, it was unaware of any facts constituting a conflict of interest or creating an appearance of a conflict of interest with regard to the GRANTEE, its Board of Directors, officers, and personnel. GRANTEE shall avoid all conflicts of interest or appearances of conflicts of interest in performing this AGREEMENT. GRANTEE has the obligation of determining if the manner in which it performs any part of this AGREEMENT results in a conflict of interest or an appearance of a conflict of interest on behalf the GRANTEE, its Board of Directors, officers, and personnel, and shall immediately notify the CITY in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of any such conflict of interest.

SECTION 24: RELIGIOUS/POLITICAL ACTIVITIES

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

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SECTION 25: 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 26: 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 27: GRANTEE'S FINANCIALS

- A. The 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 after the GRANTEE has reviewed and accepted the audit, or within twelve months of the close of the fiscal year in question, whichever is earlier, 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 amendments to such agreements brings the total annual funding to equal or exceed \$320,000, and also to any other agreements with the CITY

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that are equivalent in purpose to a grant agreements or an operating subsidy agreements, 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.

SECTION 28: 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: <https://www.sanjoseca.gov/home/showdocument?id=1268>

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

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

SECTION 29: DONATION, SPONSORSHIP, AND FUNDRAISING POLICY

GRANTEE agrees that, in the performance of this AGREEMENT, GRANTEE shall perform its obligations under the AGREEMENT in conformance with City Council Policy 1-17, Donations, Sponsorship, and Fundraising Policy. In addition, no recognition on CITY facilities and rooms in the form of logos, graphics, slogans, mottoes, or advertising of any kind shall be permitted. The Policy can be found on the CITY's website at the following link: <https://www.sanjoseca.gov/home/showdocument?id=12873>

SECTION 30: GIFTS

CITY OF SAN JOSE GRANT AGREEMENT

- 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: 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 32: FEDERAL FUNDING PROVISIONS

GRANTEE acknowledges that CITY is seeking reimbursement from federal funding sources including the American Rescue Plan Act for the costs associated with this AGREEMENT. GRANTEE agrees to comply with the federal funding contract clauses specified in Exhibit H.

SECTION 33: MISCELLANEOUS

- A. The headings of the sections and subsections of this AGREEMENT are inserted for convenience only.
- B. Where this AGREEMENT refers to CITY and no officer of the CITY is named, CITY’s Manager shall have the authority to act on CITY’s behalf.

SECTION 34: 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.

**CITY OF SAN JOSE
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**EXHIBIT A
SCOPE OF SERVICES**

1. GRANTEE shall advocate in the community on behalf of the Library.
2. GRANTEE shall, at a minimum, raise \$250,000 in donations and pledges for the Library Department, with the understanding that funds raised by GRANTEE are not a replacement for funding provided by the City of San José through its traditional funding of the Library.
3. GRANTEE shall raise annual financial support for the following Library programs and services that were predetermined with the CITY LIBRARIAN and the Foundation Board of Directors. These funding priorities are as follows:

Education Initiative – Supports the Library’s efforts to work closely with school districts and families to provide literacy services and resources, close the achievement gap by making sure our children are ready to learn by the time they enter Kindergarten, ensure that children achieve grade level reading and math proficiency, and graduate ready for college and career.

Specific Opportunities

- WeePlay Centers, WeeExplore Spaces, and WeePlay Interactives
- Summer Learning Challenge & Reading Intervention Programs
- Career Online High School

Digital Literacy and Inclusion - As one of the largest providers of public technology in Northern California, the Library is an important partner for the City’s digital broadband and Smart Cities initiatives. Demand for the Library's STEAM Stacks programming, which includes coding classes, robotics, digital and physical maker activities, and partnerships with entities from Google to the Tech, has continued to grow.

Specific Opportunities

- Maker[Space]Ship & Rovers
- Coding5K Challenge & SJ Access
- Bridge Libraries in high needs communities

San José Libraries are Vibrant Learning Centers

Supports building maintenance and enhancements, Library collections, and programs and services.

Specific Opportunities

- Diversity, Equity, and Inclusion Programs: Access to technology and devices
- California Room
- Branch or Program-Specific Endowments

**CITY OF SAN JOSE
GRANT AGREEMENT**

4. GRANTEE shall:
 - a. Develop an annual fundraising plan with strategies, specified funding, and financial goals;
 - b. Ensure that all fundraising events are carried out without the use of minors as volunteers or employed personnel, and that any volunteers or personnel employed at GRANTEE events or fundraisers are qualified to perform the duties assigned to them by GRANTEE;
 - c. Increase impact and awareness of the Library by educating donors and potential donors and the community about San José's modern libraries;
 - d. Identify, cultivate, solicit, and steward donors;
 - e. Maintain proper accounting records in accordance with generally accepted accounting principles;
 - f. Secure the expertise of consultants when needed to complete strategic goals;
 - g. Pay GRANTEE salaries.

5. GRANTEE shall administer and serve as the Fiscal Agent for the San José ("SJ") Learns Initiative and shall:
 - a. Provide sufficient fiscal administrative services to meet their fiduciary responsibility and generally accepted accounting principles;
 - b. Pay for program based on the actual cost of services, and for program administration expenditures that occur at an administrative rate not to exceed fifteen percent (15% or \$225,000.00) of the total amount available for program expenditure, based on an anticipated total fund of ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00). Grantee shall invoice the CITY one hundred percent (100%), or ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00) inclusive of the fifteen percent (15% or \$225,000.00) of the total amount upon execution of this AGREEMENT outlining the administration of the program. Invoice of the total amount shall be sent to: City of San José, Library Administration, Dr. Martin Luther King Jr. Library, 150 East San Fernando Street, San José, CA 95112.
 - c. Negotiate and execute all award agreements with awarded agencies;
 - d. Handle all disbursement of funds;
 - e. Manage grant compliance with funded agencies and arrange for program evaluation which will provide organizational and program learnings about effectiveness of the SJ Learns Initiative;
 - f. Host and maintain the SJ Learns RFP website for online information and communication;
 - g. Develop materials to communicate the program's outcomes and evaluation;
 - h. Manage all donor relationships if additional philanthropic funding is awarded for SJ Learns; and
 - i. Provide two (2) convening opportunities to share expanded learning and education best practices and program updates (approximately October and March).

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GRANT AGREEMENT**

6. CITY shall be responsible for the following tasks in the SJ Learns Initiative:
 - a) Provide subject matter expertise and organizational development that ties SJ Learns outcomes and relationships back to the CITY's Education & Digital Literacy Initiative;
 - b) Manage all communications with CITY Officials (City Council, City Manager's Office, any City appointees) including reporting on SJ Learns through the annual budget process or City Council oversight;
 - c) Facilitate the convening of the SJ Learns Advisory Committee and provide a report of all submissions for review and award by the Advisory Committee;
 - d) Draft general external communications such as newsletters, event invitations, and program updates, which will be sent to school districts, service providers, and members of the public on behalf of the GRANTEE but will seek GRANTEE approval before distribution;
 - e) Participate in a pre-survey and post survey (Evaluation);
 - f) Provide staff support and program oversight to all programmatic functions of SJ Learns (excluding fiscal transactions), including the development of professional development programming and Learning Collaboratives.

7. GRANTEE shall administer and serve as the Fiscal Agent for the San José ("SJ") Aspires Initiative and shall:
 - a. Provide sufficient fiscal administrative services to meet their fiduciary responsibility and generally accepted accounting principles;
 - b. Pay for program based on the actual cost of services, and for program administration expenditures that occur at an administrative rate not to exceed ONE HUNDRED AND FIVE THOUSAND DOLLARS (\$105,000), based on an anticipated total fund of TWO HUNDRED NINETY EIGHT DOLLARS (\$298,000.00). Grantee shall invoice the CITY, one hundred percent (100%), or TWO HUNDRED NINETY EIGHT DOLLARS (\$298,000.00) inclusive of the ONE HUNDRED AND FIVE DOLLARS (\$105,000.00) for implementation of the program, upon execution of this AGREEMENT outlining the administration of the program. Invoice of the total amount shall be sent to: City of San José, Library Administration, Dr. Martin Luther King Jr. Library, 150 East San Fernando Street, San José, CA 95112.
 - c. Handle all disbursement of funds for program;
 - d. As the grant amount is federally funded, manage grant compliance with the federal organization and arrange for program evaluation which will provide organizational and program learnings about effectiveness of the SJ Aspires Initiative;
 - e. Host and maintain the SJ Aspires website for online information and communication;
 - f. Develop materials to communicate the program's outcomes and evaluation;
 - g. Manage all donor relationships if additional philanthropic funding is awarded for SJ Aspires; and
 - h. Provide two (2) convening opportunities to share performance outcomes, best practices and program updates (approximately October and March).

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8. CITY shall be responsible for the following tasks in the SJ Learns and SJ Aspires Initiatives:
 - a) Provide subject matter expertise and organizational development that ties SJ Learns and SJ Aspires outcomes and relationships back to the CITY's Education & Digital Literacy Initiative;
 - b) Manage all communications with CITY Officials (City Council, City Manager's Office, any City appointees) including reporting on SJ Learns and SJ Aspires through the annual budget process or City Council oversight;
 - c) Facilitate the convening of the SJ Learns Advisory Committee and provide a report of all submissions for review and award by the Advisory Committee;
 - d) Draft general external communications such as newsletters, event invitations, and program updates, which will be sent to school districts, service providers, and members of the public on behalf of the GRANTEE but will seek GRANTEE approval before distribution;
 - e) Participate in a pre-survey and post survey (Evaluation);
 - f) Provide staff support and program oversight to all programmatic functions of SJ Learns and SJ Aspires (excluding fiscal transactions), including the development of professional development programming and Learning Collaboratives.
9. GRANTEE's Executive Director and Board Chair will meet a minimum of six (6) times throughout the term of this AGREEMENT with CITY's Librarian or designee to review GRANTEE's fundraising plans, discuss progress, and ensure coordination of efforts.
10. GRANTEE's Executive Director and Board Chair will meet annually with City Librarian or designee to review the prior year's accomplishments and budget, and to negotiate the scope of services for following year which shall include but not be limited to City funding priorities, review of GRANTEE's work plan and fundraising plan, and establish deliverables and payment criteria.
11. GRANTEE shall transfer funds raised pursuant to the terms of this AGREEMENT to the CITY quarterly, unless otherwise specified by the donor of a restricted gift.
12. GRANTEE agrees to supply the use of a privately-owned motor vehicle in connection with any travel involved in performing the services required herein to be performed by GRANTEE.

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EXHIBIT B

MONITORING, EVALUATION AND REPORTING REQUIREMENTS

1. In February and August 2022, GRANTEE shall submit to CITY LIBRARIAN a narrative and financial report, which shall set forth in detail all financial transactions related to GRANTEE's expenditure of the Grant Award. The form of the financial report must be acceptable to the CITY LIBRARIAN.

2. Reports will provide information on its fundraising and advocacy activities including:
 - a. Fundraising plan and accomplishments/results;
 - b. Cultivation and stewardship activities;
 - c. Advocacy activities and outcomes, and;
 - d. Program outcomes, evaluation and effectiveness of SJ Learns Initiative and SJ Aspires program as the fiscal agent.

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**EXHIBIT D
PAYMENTS TO GRANTEE**

1. CITY agrees to pay GRANTEE a total grant in the amount not to exceed FIFTY THOUSAND DOLLARS (\$50,000.00) (“Grant Award”). CITY agrees to process payment of the Grant Award upon execution of this AGREEMENT with the receipt of an Invoice from GRANTEE.
2. GRANTEE shall expend the Grant Award to defray costs of the Program as specified in the attached **EXHIBIT A** attached hereto.
 - a. If any of the Grant Award remains unexpended at the expiration of this AGREEMENT, the CITY LIBRARIAN may, at his/her sole option, extend the term of this AGREEMENT, or, alternatively, require GRANTEE to repay any amounts remaining unexpended. Any expenditure of the Grant Award that is not in compliance with this Section constitutes a disallowed cost (“Disallowed Cost”).
3. CITY agrees to pay GRANTEE as the fiscal agent for the SJ Learns Initiative, an administrative rate not to exceed fifteen percent (15% or \$225,000.00) of the total amount available for program expenditure, based on an anticipated total fund of ONE MILLION FIVE HUNDRED DOLLARS (\$1,500,000.00). One hundred percent (100%), or ONE MILLION FIVE HUNDRED DOLLARS (\$1,500,000.00), of the funds will be paid upon execution of this AGREEMENT with the receipt of an Invoice from GRANTEE.
4. CITY agrees to pay GRANTEE as the fiscal agent for the SJ Aspires Initiative, an administrative rate not to exceed \$105,000, based on an anticipated total fund of TWO HUNDRED NINETY EIGHT DOLLARS (\$298,000.00). One hundred percent (100%), or TWO HUNDRED NINETY EIGHT DOLLARS (\$298,000.00), of the funds will be paid upon execution of this AGREEMENT with the receipt of an Invoice from GRANTEE.

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**EXHIBIT G
INSURANCE REQUIREMENTS**

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

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

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

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

B. Minimum Limits of Insurance

GRANTEE shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage including for ongoing operations and products completed. 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
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and

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C. Deductibles and Self-Insured Retentions

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

D. Other Insurance Provisions

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

1. Commercial General Liability and Automobile Liability Coverages

a. The City of San José, its officers, employees, and agents 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, and agents. 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, or agents.

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 a waiver of subrogation in favor of the CITY, its officers, employees, and agents.

2. Workers' Compensation and Employers' Liability

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

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 nonpayment of premium.

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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 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 mailed in pdf to: Riskmgmt@sanjoseca.gov

Certificate Holder
City of San José – Finance
Risk Management
200 East Santa Clara Street, 14th Floor Tower
San José, CA 95113-1905

G. Subcontractors

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

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**EXHIBIT H
FEDERAL FUNDING 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 funding provisions in performing the Agreement. If any of these federal funding provisions conflict with any other provisions of this Agreement, the federal funding provisions will take precedence unless the other provision is more restrictive, in which case the other provision will control.

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.
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.

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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 Coronavirus State and Local Fiscal Recovery Funds under the American Rescue Plan Act (ARPA) 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:

1. **Overtime requirements.** No contractor or subcontractor contracting for any part of the Agreement work which may require or involve the employment of laborers

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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

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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 Coronavirus State and Local Fiscal Recovery Funds under the American Rescue Plan Act (ARPA).

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 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 Coronavirus State and Local Fiscal Recovery Funds under the American Rescue Plan Act (ARPA).

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.

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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 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 government-wide exclusions in the System for Award Management (www.sam.gov).


dawn.coppin@sjplf.org (12/8/2021)
Email: dawn.coppin@sjplf.org

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;

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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:

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 Coronavirus State and Local Fiscal Recovery Funds under the American Rescue Plan Act (ARPA) 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.

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K. Notice of FEMA Reporting Requirements and Regulations (applicable to FEMA)

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

1. **General.** The City is using Public Assistance grant funding awarded by FEMA to the State of California to pay, in whole or in part, for the costs incurred under this Agreement. As a condition of Public Assistance funding under (major disaster or emergency) declaration, FEMA requires the State of California to provide 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 which, in turn, will enable the State of California to satisfy reporting requirements to FEMA.
 - b. Failure of State of California to satisfy reporting requirements to FEMA is a material breach of the FEMA-State Agreement, 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:
 - 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.

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- 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 US Treasury 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.
- 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 US Treasury 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 US Treasury 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 5 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

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until the City, State of California, the US Treasury 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. US Treasury Seal, Logo, and Flags

The Contractor shall not use the Department of Treasury (Treasury) seal(s), logos, crests, or reproductions of flags or likeness of Treasury agency officials without specific Treasury 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 Coronavirus State and Local Fiscal Recovery Funds under the American Rescue Plan Act (ARPA) 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, Coronavirus State and Local Fiscal Recovery Funds under the American Rescue Plan Act (ARPA) 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 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

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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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The Contractor, San Jose Public Library Foundation, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.


dawn.coppin@sjplf.org (12/8/2021)
Email: dawn.coppin@sjplf.org

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date