

**Memorandum of Understanding between
City of San José and the
San Jose Public Library Foundation for
Administration of SJ Learns Grant Program**

Context:

The City of San José Public Library Department (CITY) provides leadership and support to the execution of the citywide Education and Digital Literacy Strategy. The City has created an annual budget appropriation to fund SJ Learns, which is an education initiative that involves the dissemination of grant funds to afterschool programs. The City requires support to facilitate the fiscal administration of the grant funds on an annual basis, as well as to facilitate thoughtful and unbiased evaluation of funded programs.

The San José Public Library Foundation (FOUNDATION) supports Library programming and initiatives with the mission of providing “advocacy, financial support, and innovative leadership to transform San José’s public libraries into vibrant learning centers.” The FOUNDATION is a grantmaking entity and has the ability to efficiently and effectively administer funding and evaluation of programs.

Program Description:

SJ Learns was launched in 2015 by Mayor Sam Liccardo in partnership with the School Districts, and aimed to bolster academic achievement by expanding promising and innovative after-school programs for San José students in kindergarten through third grade.

The source of funds for the program are CITY general fund appropriations, which in 2015-17 totaled \$2,000,000, and \$1,000,000 in 2018-19. CITY funds are partially matched by awarded school districts, but matching funds are maintained by school districts and are not received by the SJ Learns fund. In the first two years SJ Learns funding supported five school districts to launch new or expand existing after-school programs in 16 schools during the 2015-16 and 2016-17 school years serving over 1,100 youth across San Jose. The program focus will shift slightly in 2018-19 to focus on Out-of-School Time programs that include summer learning.

Term

The term of this Memorandum of Understanding (“MOU”) shall be **May 1, 2018** (“Commencement Date”) and shall continue through **June 30, 2019**. Regardless of the date of execution of this MOU, this MOU is effective as of the Commencement Date.

Termination

CITY or FOUNDATION shall have the right to terminate this MOU, without cause, by giving no less than thirty (30) business days' written notice of termination.

CITY’s Library Director (“DIRECTOR”) is authorized to terminate this MOU on behalf of CITY. The FOUNDATION’s Executive Director is authorized to terminate the MOU on behalf of the FOUNDATION.

Indemnification

FOUNDATION shall protect, defend, indemnify and hold harmless CITY, its officers, employees and agents against any action, demand, claim, loss or liability arising out of or resulting in any way from this MOU or any actions taken, work performed or service provided under this MOU. FOUNDATION obligations to indemnify and hold harmless exclude only such action, demand, claim, loss or liability which is due to the sole negligence or willful misconduct of CITY and/or its employees. All of FOUNDATION obligations under this Section are intended to apply to the fullest extent permitted by law and shall survive the expiration, completion or sooner termination of this MOU. In any action or claim against CITY in which FOUNDATION is defending CITY, CITY shall have the right to approve legal counsel providing CITY's defense.

CITY shall protect, defend, indemnify and hold harmless FOUNDATION, its officers, employees and agents against any action, demand, claim, loss or liability arising out of or resulting in any way from this MOU or any actions taken, work performed or service provided under this MOU. CITY's obligations to indemnify and hold harmless exclude only such action, demand, claim, loss or liability which is due to the sole negligence or willful misconduct of FOUNDATION and/or its employees. All of CITY's obligations under this Section are intended to apply to the fullest extent permitted by law and shall survive the expiration, completion or sooner termination of this MOU. In any action or claim against FOUNDATION in which CITY is defending FOUNDATION, FOUNDATION shall have the right to approve legal counsel providing FOUNDATION defense.

FOUNDATION Books and Records

FOUNDATION shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents which evidence or relates to FOUNDATION disbursement of the awards for a minimum period of three (3) years from the date of payment for and creation of the Fund. FOUNDATION shall make such records and documents available for inspection and/or audit, at any time during regular business hours, upon written request by the City Auditor, the City Manager, the City Attorney, or City's Director of Environmental Services. Unless otherwise agreed by FOUNDATION and City, such records and documents shall be made available at FOUNDATION's address of record.

FOUNDATION will make available to City's Director or his or her designee, a quarterly financial report which shall set forth in detail all financial transactions related to FOUNDATION's disbursement of the Grant Awards.

FOUNDATION shall establish and maintain, in accordance with generally accepted accounting principles, a complete record of all financial transactions related to this MOU.

FOUNDATION further agrees that such right of City to examine or audit shall continue for three (3) years after the expiration or termination of this MOU, or for such longer period, if any, as is required by applicable law. FOUNDATION shall preserve and make

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available its records (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.

FOUNDATION is responsible for repayment to City of any disallowed cost. Disallowed costs are expenses that are outside of the reasonable scope of administration or evaluation of the funding, or are not associated with the purpose of the funding. Disallowed funds may be identified through audits, monitoring or other sources of information that become available to City.

FOUNDATION Financials

City Council requires that each non-profit organization receiving \$290,000 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 FOUNDATION Board 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.

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 \$290,000 in grant and/or subsidy funds in any one fiscal year. Non-profits covered by this requirement must exert due diligence in determining when they have reached the aggregate funding threshold of \$290,000. The provisions of the financial posting requirements shall be interpreted broadly to effectuate the purpose of making available to the public information on recipients of substantial CITY funds. These provisions shall apply not only to grant agreements or operating agreements but shall also apply, without limitation, if any amendment to such agreements brings the total annual funding to equal or exceed \$290,000, 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.

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 \$290,000. Without limitation of any other remedy, GRANTEE's failure to comply with this requirement may be taken into consideration when evaluating GRANTEE's request for future grant funds or subsidies.

Organizations receiving an aggregate amount of \$25,000 or more in funds from the CITY during any fiscal year which is either (i) grant funding other than construction funding

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and/or (ii) operating subsidy funding for operation of CITY facilities, must prepare and submit via the City's WebGrants grant management system, ("WebGrants"), a completed Financial Dashboard. City's project director will provide a Financial Dashboard template upon request. The Financial Dashboard must be submitted via WebGrants within six months from the end of GRANTEE's Fiscal Year. This includes the previous Fiscal Year, if that year ended within six months of the commencement of this AGREEMENT.

Compliance With Law

In the use of funds provided pursuant to this MOU, FOUNDATION shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

Nondiscrimination

In the use of funds provided pursuant to this MOU, FOUNDATION shall not discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, marital status, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin.

Insurance

FOUNDATION agrees to have and maintain the policies set forth in Exhibit A, entitled "INSURANCE", which is attached hereto and incorporated herein. All policies, endorsements, certificates, and/or binders shall be subject to approval by the Director of Finance or the Director's authorized designee ("Risk Manager") of the City of San José as to form and content. These requirements are subject to amendment or waiver if so approved, in writing, by the Risk Manager. FOUNDATION agrees to provide City with a copy of said policies, certificates, and/or endorsements upon execution of this MOU as a condition of City payment of the Fund Amount.

No Religious or Political Advocacy

FOUNDATION shall not expend any portion of the compensation hereunder to inhibit or promote religion and the services funded by this MOU must not be used to convey a religious message. Any portion of the compensation used in contradiction to the provisions of this Section, shall be deemed a disallowed cost. FOUNDATION shall not expend any portion of the compensation hereunder for political advocacy efforts, whether for or against a political candidate, ballot measure or bill.

Conflict of Interest

FOUNDATION 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. FOUNDATION 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.

Shared Goals:

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Both organizations want to:

- Ensure responsible and effective use of funds to support grade-level readiness in the areas of reading and math for elementary school students.
- Align programming with work that effectuates a positive increase in educational outcomes for students.
- Expand and strengthen collection and analysis of educational outcome metrics as a standard for program evaluation.
- Provide and increase access to professional development for educators.
- Provide a safe place for youth to learn in Out-of-School Time environments.
- Make program more visible in the surrounding communities.

Organizational Commitments:

FOUNDATION responsibilities:

- FOUNDATION shall provide services as the fiscal agent for the period covered by this MOU at an administrative rate not to exceed fifteen percent (15%) of the total amount available for program expenditure, based on an anticipated total fund of ONE MILLION DOLLARS (\$1,000,000). One hundred percent (100%), or ONE MILLION DOLLARS (\$1,000,000), of the funds will be paid upon execution of this MOU.
- FOUNDATION shall provide sufficient fiscal administrative services to meet their fiduciary responsibility and generally accepted accounting principles.
- FOUNDATION will invoice CITY for program expenditures that occur for program administration and evaluation. Invoices will be sent to Library Administration.
- FOUNDATION shall hold all award agreements with Grantees.
- FOUNDATION shall handle all disbursement of funds.
- FOUNDATION shall manage grant compliance with funded agencies and arrange for program evaluation. Program evaluation will provide organizational and program learnings about effectiveness of the educational initiative.
- FOUNDATION shall develop materials to communicate the program outcomes and evaluation.
- FOUNDATION shall manage all donor relationships if additional philanthropic funding is awarded for SJ Learns.
- FOUNDATION shall provide two (2) convening opportunities to share expanded learning and education best practices and program updates (October and March).

CITY Responsibilities:

- CITY shall provide subject matter expertise and organizational development that ties SJ Learns outcomes and relationships back to the CITY's Education & Digital Literacy Initiative
- CITY shall 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

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- CITY shall facilitate the convening of the SJ Learns Advisory Committee and provide a report of all submissions for review and award by the Advisory Committee.
- CITY shall host and maintain the SJ Learns RFP website until the CITY and the FOUNDATION mutually agree on a permanent location for online information and communication.
- CITY shall 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 FOUNDATION but will seek FOUNDATION approval before distribution.
- CITY shall participate in a pre-survey and post survey (Evaluation).
- CITY shall 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.

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

**SAN JOSE PUBLIC LIBRARY
FOUNDATION**

CITY OF SAN JOSE

BY: _____

BY: _____

PRINT: Dawn Coppin

PRINT: Toni Taber, CMC

TITLE: Executive Director

TITLE: City Clerk

DATE: _____

DATE: _____

APPROVED AS TO FORM:

Kevin Fisher
Chief Deputy City Attorney