

**City of San Jose
Grant Agreement With
San Jose Children's Discovery Museum**

This Grant Agreement ("Agreement") is entered into this _____ day of _____, 2017 by the City of San Jose, a municipal corporation ("City") and the San Jose Children's Discovery Museum, a California non-profit corporation ("Grantee").

THE PARTIES HEREBY AGREE AS FOLLOWS:

I. General Information – Grant:				
WebGrants ID: _____		Contract No.: _____		
Grant Description:	This Agreement is a partnership between the Grantee and the City for the design and construction of the Projects, listed below, at the Children's Discovery Museum facility located at 180 Woz Way, San Jose, CA 95110.			
Projects:	1. Public Restroom Addition 2. Sidewalk Concrete Addition 3. Security Surveillance, Public Address and Intercom Systems			
Grant Amount:	Not to exceed \$400,000			
Funding Source:	Fund 001 – Appropriation 401T			
Agreement Term:	Start Date:	09/01/17	End Date:	8/31/19

II. General Information - Grantee:	
Taxpayer ID	942870828
CITY Business License/Tax No.:	4522190210
Type of Entity:	Non-profit corporation
State of Incorporation or Residency:	California

III. Contact Information – Grantee:

Contact Person:	Marilee Jennings
Title:	Executive Director, San Jose Children's Discovery Museum
Address:	180 Woz Way San José, CA 95110
Telephone No:	408-673-2837
Email:	mjennings@cdm.org

IV. Contact Information - City

Contact Person:	Rodney Rapson
Title:	Division Manager, City of San Jose Public Works Department
Address:	200 E. Santa Clara St., 5 th Floor San José, CA 95113-1907
Telephone No:	408-535-8410
Email:	Rodney.rapson@sanjoseca.gov

V. Exhibit List:

The following Exhibits are attached and incorporated into this Agreement:

Exhibit:	Title:	Attached	
		Yes	No
A	Grant Terms & Conditions	☒	☐
B	Scope of Services/Work	☒	☐
C	Monitoring and Reporting Requirements	☒	☐
D	Budget Summary	☐	☒
E	Schedule of Payments	☒	☐
F	Additional Grant Conditions	☐	☒

G	Employee/Volunteer Clearance Verification and Compliance with the Child Abuse & Neglect Reporting Act	☐	☒
H	Insurance	☒	☐

VI. Attachments:			
The following grant provisions are required for this Agreement, and are attached and incorporated into this Agreement.			
	Jurisdiction requiring the language	Attached:	
		Yes	No
	City of San Jose Funding		
	Federal	☐	☒
	State	☐	☒
	County	☐	☒
	Other Public Agency	☐	☒
	Private Funding Agency	☐	☒

I certify that I have read, understand, and agree to all the terms and provisions contained in this Agreement, including without limitation, all exhibits, and attachments.

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

San José Children's Discovery Museum

Grantee Signature: Marilee Jennings Date: 12/19/17
 Print Name: Marilee Jennings
 Title: Executive Director

City of San José, a
municipal corporation

Date: _____

Approved as to form:
Glenn Schwarzbach
Sr. Deputy City Attorney

Glenn Schwarzbach Date: 1-16-2018

Exhibit A

Grant Terms and Conditions

SECTION 1: PROGRAM COORDINATION

- A. CITY:** The person identified in Section IV of the Agreement, entitled "Contact Information – City," shall be the City official responsible for the Projects and shall render overall supervision of the progress and performance of this Agreement by City ("City Contact Person"). All work and/or services agreed to be performed by City shall be under the overall direction of the City Contact Person.
- B. GRANTEE:** The person identified in Section III of the Agreement, entitled "Contact Information – Grantee," is the Projects director who shall have overall responsibility for the progress and execution of this Agreement for the Grantee ("Grantee Contact Person"). Grantee shall immediately notify City in writing should circumstances or conditions subsequent to the execution of this Agreement require substitution of a new contact person.

Grantee's Contact Person and Grantee's staff will implement the terms and conditions of this Agreement in full cooperation with the City Contact Person.

SECTION 2: TERM OF AGREEMENT AND GRANT AWARD

- A.** Unless extended or sooner terminated in accordance with the terms of this Agreement, the term of this Agreement shall commence on the Start Date and expire on the End Date, as set forth in Section I of the Agreement, entitled "General Information – Grant."
- B.** Regardless of the date of execution of this Agreement, this Agreement is effective as of the Start Date. The City and Grantee acknowledge that the Grantee completed the Public Restroom and Sidewalk Concrete Additions and has performed other Grant Services in anticipation of the execution of this Agreement ("Retroactive Grant Services"). The Grantee completed the Public Restroom and Sidewalk Concrete Additions to the City's satisfaction; the other Retroactive Grant Services performed by the Grantee before the execution of this Agreement are in accordance with this Agreement. City will make payments for the Retroactive Grant Services in accordance with the terms and conditions of this Agreement.
- C.** A request to extend this Agreement, along with a description of the revised Scope of Services in Exhibit B, must be submitted by Grantee to the City no less than forty-five (45) calendar days before the End Date. Any extension of the End Date, 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, and extension of the Agreement shall be at the sole discretion of City. If additional funds are required for any extension, then such extension shall be subject to appropriation of funds by the City Council.

SECTION 3: GRANT SERVICES

Grantee shall perform the services and/or work specified in detail on **Exhibit B**, entitled "Scope of Services/Services," and shall do so in compliance with the terms and conditions of this Agreement.

SECTION 4: PAYMENTS

- A. Subject to the terms and conditions of this Agreement, City agrees to pay Grantee the Grant Amount set forth in Section I of the Agreement, entitled "General Information – Grant," to perform and complete the work and/or services described in **EXHIBIT B**, entitled "Scope of Services/Work." City's obligation to make payments is subject to Grantee's compliance with the terms and conditions set forth in **EXHIBIT D**, entitled "Schedule of Payments." Any costs incurred by Grantee above the Grant Award amount, less City Costs as defined in Exhibit B, 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, with applicable invoices and/or financial reports in sufficient detail to determine actual costs incurred, hours services provided and any indirect, overhead or administrative costs charged to the City.
- C. The City will review invoices or financial reports for adherence to Agreement requirements.
- D. City will not pay for unauthorized services rendered by Grantee or for claimed services that Grantee has not provided as required by this Agreement.
- E. The City Manager or his/her designee may, without prior notice to Grantee, at any time in his/her absolute discretion, suspend or terminate payment to Grantee, in whole or in part, terminate work or expenditures by Grantee under this Agreement, or not make any particular payment under this Agreement or take any other action available in the event of any of the following occurrences:
 - 1. If Grantee (with or without knowledge) 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 that may materially jeopardize or adversely affect the undertaking of, or the carrying out of, the Scope of Services/Work;
 - 3. If Grantee, without having obtained City approval, has taken any action that 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 Scope of Services/Work or other obligations as described in any Exhibit or Attachment to this Agreement;
6. If Grantee submits to CITY any report which is incorrect or incomplete in any material respect, or is untimely.

SECTION 5: PREVAILING WAGES:

- A. In accordance with Chapter 14.09 of Title 14 of the San José Municipal Code, entitled "Prevailing Wage Requirements for City Contracts Involving Public Works," certain work performed by the Grantee may be subject to the payment of prevailing wages under Chapter 1 of Part 7 of the California Labor Code, starting with Labor Code Section 1720, which requires the payment of prevailing wages to all workers performing "construction." For purposes of this Agreement, "construction" has the meaning set forth in California Labor Code Section 1720(a) and includes construction-oriented work performed during the design and preconstruction phases, such as inspection, surveying, drilling, trenching, and excavation ("Construction").
 1. Notwithstanding anything to the contrary in this Agreement, the Grantee shall pay, or cause to be paid, the applicable prevailing wage to all workers performing prevailing wage work under the California Labor Code. The applicable prevailing wage shall be the wage rate established by the State Department of Industrial Relations for the applicable job classification.
 2. The Grantee shall maintain, or cause to be maintained, all records documenting the payment of prevailing wages, including, but not limited to, certified payroll records conforming to California Labor Code Section 1776. The Grantee shall maintain these records in accordance with the requirements of Section 7 of this Agreement. The Grantee shall provide to the City, at no cost to the City, a copy of all such records within 10 business days of a request for such records by the division of the City responsible for labor compliance.
- B. The Grantee shall include these prevailing wage provisions in all subcontractor agreements that involve the expenditure of Grant funds for Construction.

SECTION 6: DEFAULT AND TERMINATION OF AGREEMENT

- A. The City may terminate this Agreement without cause by giving Grantee thirty (30) calendar day's written notice.
- B. Each of Grantee's obligations under this Agreement is 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) calendar 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.

If the 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 4 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) calendar days following the date of termination Grantee shall refund to City any unused portion of the Grant Award. 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 that 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.
2. Upon termination, Grantee shall immediately deliver to City any and all copies of materials used or developed for this grant including, but not limited to, all data collection forms, reports, studies and other work performed, whether or not completed by Grantee or Grantee's subcontractor, if any, under this Agreement.
- D. Nothing in this Agreement shall be construed so as to deprive City of its rights and remedies at law or in equity against Grantee.
- E. City's Director of the Department of Public works 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 Scope of Services/Work 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 before exercising its rights to suspend payment to Grantee or to terminate this Agreement.

SECTION 7: GRANTEE'S FISCAL RESPONSIBILITIES.

Grantee shall:

- A. Appoint and submit to City the name of a fiscal agent responsible for the financial and accounting activities of the Grantee, including the receipt and disbursement of Grantee funds.
- B. Establish and maintain a system of accounts conforming to generally accepted principles of accounting for budgeted funds. The accounting system shall separate costs and expenses incurred by Grantee with City funds as distinguished from costs and expenses paid for from other funding sources. Such system of accounts shall be subject to City's review and approval.
- C. Document all Grant-related costs by maintaining complete and accurate records of all financial transactions, including but not limited to contracts, invoices, time cards, cash receipts, vouchers, canceled checks, bank statements and/or other official documentation evidencing in proper detail the nature and propriety of all charges.
- D. Submit to the City, within thirty (30) calendar days of completion of each Project, documentation required by City.
- E. Certify insurability subject to City approval as outlined in **EXHIBIT H**, entitled "Insurance."
- F. Submit to City at such times and in such forms as City may require, such statements, records, reports, data, and information pertaining to matters covered by this Agreement.
- G. Administer Projects and all programs in conformance with OMB Circular A-122, "Cost Principles for Non-Profit Organizations." These principles shall be applied for all costs incurred whether charged in a direct or indirect basis.
- H. If indirect costs are charged, the GRANTEE will develop an indirect cost allocation plan for determining the appropriate GRANTEE's share of administrative costs and shall submit such plan to the CITY for approval.

SECTION 8: REPORTING REQUIREMENTS.

Grantee shall submit reports related to Grantee's performance under this Agreement prepared in accordance with **EXHIBIT C**, entitled "Monitoring and Reporting

Requirements,” and, to the extent applicable, on the schedule specified in **EXHIBIT E**, entitled “Schedule of Payments.” The format of the reports shall be as provided in this Agreement unless otherwise directed by the City’s Contact Person. A final report shall be delivered to City before expiration of this Agreement, as may be further described in **EXHIBIT C**.

SECTION 9: RECORDS, REPORTS AND AUDITS OF GRANTEE.

- A. **Establishment and Maintenance of Records.** Grantee shall maintain records, including but not limited to, books, financial records, supporting documents, statistical records, personnel, property, and all other pertinent records sufficient to reflect properly:
1. All direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred to perform this Agreement, and
 2. All other matters covered by this Agreement. Such records shall be maintained in accordance with requirements now or hereafter prescribed by City.
- B. **Preservation of Records.** Grantee shall preserve and make available its records:
- a. For a period of four (4) years from the date of final payment to Grantee under this Agreement; or
 - b. For such longer period, if any, as may be required by applicable law; or
 - c. If this Agreement is completely or partially terminated, for a period of four (4) years from the date of any resulting final settlement.
- C. **Examination of Records; Facilities.** At any time during normal business hours, and as often as may be deemed necessary by City, Grantee agrees that City, and/or any of its authorized representatives, shall:
- a. For a period of four (4) years after final payment under this Agreement; or,
 - b. For such longer period as may be required by applicable law; or
 - c. If this Agreement is completely or partially terminated, for a period of four (4) years from the date of any resulting settlement;

have access to and the right to examine its plants, offices and facilities engaged in performance of this Agreement and all its records with respect to all matters covered by this Agreement. Grantee also agrees that City, or any of its respective authorized representatives, shall have the right to audit, examine, and make excerpts or transcripts of and from such records, and to make audits of all contracts and subcontracts, invoices, payrolls, records of personnel, conditions of

employment, materials, and all other data relating to matters covered by this Agreement. Notwithstanding anything in this Agreement to the contrary for monitoring purposes, City shall not require access to any information of Grantee mutually determined by the parties hereto to be proprietary.

D. **Independent Audits.** Grantee shall perform an independent fiscal and compliance audit at least annually, in conformance with the accounting standards and principles. Such audits must identify the funds received and disbursed relating to this Agreement. The costs for such audits shall be at Grantee's expense, unless otherwise provided for in this Agreement. The following provisions apply to the completion of the independent audit:

1. Funds will be set aside in Grantee's budget for the independent audit. A separate line item will be established.
2. Grantee shall enter into an agreement with an independent public accountant certified to practice in the State of California no later than sixty (60) calendar days before the end of this Agreement to perform audit of Grantee's fiscal year.
3. The audit must be completed and sent to City within the later of one hundred fifty (150) calendar days of the end of this Agreement or ninety (90) days after the end of Grantee's fiscal year.
4. Should Grantee not enter into the agreement with an independent public accountant certified to practice in the State of California, or should an audit not be done on a timely basis, City, at its sole discretion, may enter into an agreement with an independent public accountant certified to practice in the State of California to perform the audit and utilize Grantee's set-aside funds for the audit.
5. The independent fiscal audit shall conform to generally accepted governmental auditing principals and, when applicable, Office of Management and Budget Circular A-102, "Attachment P, Audit Requirements." Such audits shall identify the funds received and disbursed under this Agreement.
6. For Grantees that expend \$500,000 or more of Federal financial assistance in a fiscal year, in addition to conducting normal financial audit procedures, the Grantee's independent public accountant certified to practice in the State of California shall perform tests to ascertain that:
 - a. Expenditures submitted for reimbursement are allowable under OMB Circular A-87;
 - b. Expenditures are in compliance with this Agreement; and
 - c. Applicable laws and regulations. The independent public accountant certified to practice in the State of California shall render an opinion as to whether Grantee's expenditures complied

with the Single Audit Act of 1984 and OMB Circular A-133 "Audits of State and Local Governments and Non-Profit Organizations."

- d. Grantees that are not required under the Single Audit Act to submit reports in conformance with the requirements of OMB Circular A-133 "Audits of State and Local Governments and Non-Profit Organizations" shall submit an audit performed in accordance with Generally Accepted Auditing Standards and submit reports which conform to Generally Accepted Accounting Principles and that includes the following components:
 - i. Balance Sheet or Statement of Financial Position;
 - ii. Statement of Support, Revenue, and Expenses and Changes in Fund Balances or Statement Activities;
 - iv. Statement of Functional Expenses;
 - v. Statement of Auditor's Report;
 - vi. Communication of Internal Control Related Matters Identified in an Audit (Management Letter) from Auditor. Grantee shall also submit to the City a written management response to the findings of the Internal Control Matters.
7. For Grantees that expend more than \$500,000 of financial assistance in a fiscal year, the audit shall identify in a Schedule of Governmental Financial Assistance the gross amounts of grants obtained by Grantee from all governmental sources, the periods covered by the grants, and the grant contract or identification number(s), if any, under which funds were received and disbursed by Grantee during the audited fiscal year. In addition, the Schedule of Governmental Financial Assistance shall show the amount received and disbursed under each grant during the audited fiscal year, including the amount received and disbursed under this Agreement.
8. Grantee's independent public accountant certified to practice in the State of California shall perform reviews of Grantee's internal control systems and Grantee's compliance with applicable laws, regulations and the requirements of this Agreement.

The independent public accountant certified to practice in the State of California shall issue a report on the financial statements and the Schedule of Governmental Financial Assistance, a report on the study and evaluation of internal controls and a report on GRANTEE compliance. The three reports may be bound into a single report, or presented at the same time as separate documents.

- E. **CITY Audits.** City may perform an independent audit. Such audits may cover program as well as fiscal matters. Grantee will be afforded an opportunity to respond to any audit findings, and have the responses included in, the final audit report. Costs of such audits will be borne by City.
- F. **Disallowed Costs.** Grantee is liable for repayment of disallowed costs as determined by City in its sole discretion. Disallowed costs may be identified through audits, monitoring or other sources. Grantee shall be afforded the opportunity to respond to any adverse findings which may lead to disallowed costs. City's Director of Public Works shall make the final determination of disallowed costs.

SECTION 10: CITY ACKNOWLEDGMENT

Grantee shall acknowledge the support of City, where appropriate, in written documents and informational materials regarding the Projects.

SECTION 11: INSURANCE

- A. Grantee agrees to have the insurance required by **Exhibit H**, 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 Jose 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.
- B. If the Grantee uses subcontractors to perform work on any of the Projects, the Grantee shall require such subcontractors to maintain insurance and require that such insurance name the City as an additional insured.

SECTION 12: INDEMNIFICATION AND HOLD HARMLESS

- A. In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the parties pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead the Grantee and City agree that pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold the other party, its officers, board members, employees, contractors, and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, board members, employees, contractors, or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other party hereto, its officers, board members, employees, contractors, or agents, under or in connection with or arising out of

any work, authority or jurisdiction delegated to such other parties under this Agreement.

- B. The obligations under this indemnification provision shall survive the expiration or termination of this Agreement.
- C. If the Grantee uses subcontractors to perform any of the work on the Projects, Grantee shall include in each subcontract an indemnity and hold harmless provision substantially similar to the one set forth above. The provision shall include that the subcontractor's indemnity and hold harmless obligations run to the City as well as the Grantee.

SECTION 13: 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, or by facsimile, or electronic mail, to the contact persons identified in Section I of this Agreement, entitled "General Information – Grant."
- B. Either party may change its address by sending written notice of the new address to the other party pursuant to this Section.

SECTION 14: AMENDMENTS

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

SECTION 15: 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, ethnic 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 before the date of commencement, including, but not limited to a City of San Jose business tax certificate or exemption, if applicable. Grantee is responsible for contacting the appropriate offices and filing the necessary documents to comply with these requirements.

SECTION 16: RELATIONSHIP OF PARTIES

- A. In the performance of this Agreement, Grantee shall not act, and is not at any time authorized by the City to act, as the agent or representative of City in any matter. Grantee shall 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. Grantee and Grantee's employees shall be at all times independent contractors and not agents or employees of the City. 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, or any compensation other than as prescribed herein. 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 17: WAIVER

- A. In no event shall any payment by City or any acceptance of payment by Grantee hereunder constitute or be construed to be a waiver by City or Grantee of any breach of covenants or conditions of this Agreement or any default which may then exist on the part of City or Grantee, and the making of any such payment or the acceptance of any such payment while any such breach or default exists, shall in no way impair or prejudice any right or remedy available to City or Grantee with respect to such breach or default.
- B. The waiver by any party to this Agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement.

SECTION 18: 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 19: INTEGRATED DOCUMENT

This Agreement, including any Exhibits and Attachments incorporated herein, embody the entire Agreement between City and Grantee. No oral agreements or conversations with any officer, agent or employee of City shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such oral agreement shall be considered as unofficial information and in no way binding upon City.

SECTION 20: 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 affects 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 21: VENUE

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 22: CONFLICT OF INTEREST

Grantee shall comply with the applicable provisions of the Political Reform Act of 1974, as amended, relating to conflicts of interest (codified in California Government Code Section 87000, *et seq.*), with the conflict of interest provisions of Government Code Section 1090 *et seq.* and with the City's Code of Ethics, set forth in City Council Policy 0-15. Grantee shall promptly advise City of the facts and circumstances concerning any disclosure made to it or any information obtained by it relating to conflicts of interest.

SECTION 23: RELIGIOUS/POLITICAL ACTIVITIES

- A. Grantee shall not expend any portion of the Grant Award to inhibit or promote religion and the Scope of Services/Work 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 is a disallowed cost.
- B. Grantee shall not expend any portion of the Grant Award for political advocacy efforts, whether for or against a political candidate, ballot measure or bill.

SECTION 24: ASSIGNABILITY

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 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 25: SUBCONTRACTS

- A. No subcontract will alter in any way any legal responsibility of Grantee to provide work and/or 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 and 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 any subcontract.
- E. City has the right to refuse reimbursement for obligations incurred under any subcontract that does not comply with the terms of this Agreement.

SECTION 26: EMPLOYEES/VOLUNTEERS

- A. Any and all personnel employed or volunteers retained by Grantee to implement the Projects shall be qualified to perform the duties assigned to them by Grantee.
- B. Grantee shall not hire employees or volunteers who will have supervisory or disciplinary authority over minors who have been convicted of any offense identified in California Public Resources Code Section 5164. Grantee shall fully indemnify, defend, and hold harmless City for any such hiring. Grantee shall notify City in writing of any violation of this provision as soon as is reasonably practicable.
- C. Grantee shall also not employ any person who is permitted to provide services requiring contact with children or providing food concessionaire services or other licensed concessionaire services in that area, unless Grantee has complied with the TB testing requirements set forth in Section 5163 of the California Public Resources Code.
- D. Regardless of whether services have been provided prior to full execution of this Agreement, Grantee certifies to the City that all services were provided in full compliance with the terms and provisions of this Agreement.

SECTION 27: AUDIT POSTING REQUIREMENTS.

- A. City Council requires that each non-profit organization receiving \$250,000 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 make available for public view on the internet, annual audited financial statements. The audited financial statements must be made available for view within 150 calendar days from the end of the non-profit's fiscal year (which period may be extended by the City Manager based upon a showing of hardship or other good cause) and must be submitted to the City Contact Person and posted on the Grantee's website at an easy access location.
- 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 \$250,000 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 \$250,000. 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 \$250,000, and also to any other agreements with the City that are equivalent in purpose to a grant agreement or an operating subsidy agreement, regardless of the title of the agreement.

- C. This posting requirement shall remain in effect until an entire fiscal year passes in which the non-profit does not have any City contracts that provide for grants and/or subsidies from the City in an aggregate amount equaling or exceeding \$250,000. 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: <http://www.sanjoseca.gov/?nid=1774>.
- B. Environmental procurement policies and activities related to the completion of work will include wherever practicable, but are not limited to:
 - 1. Use of recycled and/or recyclable products in daily operations.(i.e. 30, 50, 100% PCW paper, chlorine process free; triclosan free hand cleaner, etc.)
 - 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: GIFTS

- A. Grantee is familiar with City's prohibition against the acceptance of any gift by a City officer or designated employee, which prohibition is found in Chapter 12.08 of the San José Municipal Code.
- B. Grantee agrees not to offer any City officer or designated employee any gift prohibited by said Chapter.

- C. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this Agreement by Grantee. In addition to any other remedies City may have in law or equity, City may terminate this Agreement for such breach as provided in Section 6 of this Agreement.

SECTION 30: DISQUALIFICATION OF FORMER EMPLOYEES

Grantee is familiar with the provisions relating to the disqualification of former officers and employees of City in matters that 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 31: MISCELLANEOUS

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

EXHIBIT B
SCOPE OF SERVICES/WORK

SECTION 1: PROJECT DESCRIPTIONS

The following is a description of each of the Projects that Grantee shall design and construction with the Grant.

A. Public Restroom Addition:

The Project involves the construction of a new, single occupancy, unisex bathroom. The new bathroom will be accessible through an existing exterior wall, and new ADA accessible ramp and platform will be constructed. It will provide typical restroom facilities for public guests of the museum, including a toilet, sink, and baby changing table. The interior dimensions of the new bathroom will be approximately 7'7" by 6'11" with an adjoining vestibule measuring approximately 7'7" by 5'3". The Project will involve mechanical, electrical, and plumbing trades, and will require installation of a sanitary sewer line, hot and cold water, lighting with occupancy sensor, emergency exit signage, fire sprinkler modification, and exhaust fan vented to the outside.

- **Engineer's Estimate for Project:** \$177,512.00
- **Estimated City Costs (defined below):** \$14,868.00

B. Sidewalk Concrete Addition:

The Project involves adding approximately 5 feet of concrete to the existing sidewalk from the Guadalupe River Park Trail, north to the service yard entrance on Woz Way along the southwest portion of the existing Children's Discovery Museum building. The Project includes the installation of ADA curb cuts and the removal of 5 trees and several bushes.

- **Engineer's Estimate for Project:** \$30,063.00
- **Estimated City Costs (defined below):** \$0.00

C. Security Surveillance, Public Address, and Intercom Systems:

This Project involves updating and expanding the museums' security surveillance system, public address system and intercom system.

The security surveillance system upgrades will include new network video recorders, the reuse or replacement of 18 existing cameras, the addition of 20 new camera locations (14 interior/6 exterior), new video management software, and training on the use of the system. New CAT6 network cabling will be installed for all 38 cameras and network video recorders.

The public address system upgrades will include adapting the system to our VoIP phone system, replacing the 10 existing interior public address horns with new speakers, adding 4 new exterior public address speakers, adding 2 new public address speakers and microphone to the café area and providing training on the use of the system.

The facility intercom system will be integrated into our VoIP phone system. It will include (3) push button and video call boxes with the ability to program them to ring at any phone extension.

A new, access control system will use existing card readers located at 12 doors. The new control system will include management software and provide an onsite server with the ability to add or delete users, define access times, and give records of access.

- **Engineer's Estimate for Project:** \$177,557.00
- **Estimated City Costs (defined below):** \$0.00

SECTION 2: CITY ADMINISTRATIVE COSTS

- A. Grantee will set aside a total of \$14,868.00 of the Grant Amount to pay for the following City costs associated with the projects: Code reviews and approvals, management, inspections, and permits (collectively "City Costs"). This applies to the Public Restroom Addition. No City fees associated with the sidewalk concrete addition, Security Surveillance, Public Address, and Intercom Systems.
- B. If the total City Costs exceed the estimate, the Grantee is responsible for paying the City the difference.

SECTION 3: DESIGN AND CONSTRUCTION COSTS

Grantee shall complete the design and construction of the Projects for no more than the Grant Amount, less Estimated City Costs. The Grantee is solely responsible for using its own funds to pay for any costs associated with implementing the Projects that exceeds the Grant Amount.

SECTION 4: PROJECT IMPLEMENTATION

In addition to complying with all other requirements of this Agreement (including Sections 5 [Prevailing Wage], 11 [Insurance] and 12 [Indemnity] of Exhibit B), Grantee shall implement the Projects in accordance with the following requirements:

- A. Grantee shall exercise its supervisory responsibilities with respect to the construction of the Projects with the objective that all work and materials shall be of the highest quality appropriate to the uses for which such improvements and materials are intended, and as are reasonably consistent with the nature of the improvements and the amount budgeted therefore.

- B. All design documents must be prepared by the appropriate licensed design professional. The Grantee will provide the City with the design documents for each Project for review and comment, and shall not procure a construction contractor for the Project until obtaining the City Contact Person's written consent to proceed.
- C. The Grantee will comply with all requirements for procuring a public works project as set forth Section 1217 of the City Charter and Title 14 of the San Jose Municipal Code.
- D. All applicable and required approvals of plans and specifications, permits, and all other approvals and documents required, shall be fully applicable to, and obtained by Grantee for all work carried out by Grantee under this Agreement.
- E. Grantee shall ensure that all construction work is performed by a properly licensed contractor that is qualified to do the work.
- F. Construction documents, permits, and City's standard specifications may be modified only by field order changes.
- G. Inspection of the work shall be performed on a regular basis by the City's Department of Public Works in its normal course of business. The City shall determine the frequency of inspections for each Project.
- H. If, at any point during construction, City determines that the work is not being performed in a satisfactory manner, City shall have the right to stop the construction and direct Grantee to correct the deficiency.
- I. All applicable federal, state and local laws and policies regarding public works construction shall be adhered to, including, but not limited to, the payment of prevailing wages.
- J. Grantee shall provide full sets of construction drawings, specifications and "as-built" record drawings to City.
- K. Grantee shall not finally accept any work until the City has first finally accepted the work.

SECTION 5. Surety Bonds.

Grantee shall not commence the construction of a Project without first requiring the general contractor to provide payment and performance bonds for the Project as follows:

- A "Payment Bond" in the amount of 100% of the contract price and meeting the requirements of California Civil Code Sections 3247 and 3248; and
- A "Faithful Performance Bond" in the amount of 100% of the contract price.

Each bond shall name the City as the beneficiary, or as an additional beneficiary, and shall give the City the right to enforce the bond. Grantee, or Grantee's general construction contractor, shall pay all bond premium costs.

Grantee shall require that changes in work within the scope of the original work, and/or extensions of time made pursuant to the construction contract(s), shall in no way release the surety from its obligations. Notice of such changes or extensions shall be waived by the surety.

Such surety bonds shall be duly executed by a responsible corporate surety authorized to issue such bonds in the State of California, and shall be obtained through an authorized agent with an office in California.

EXHIBIT C

MONITORING AND REPORTING REQUIREMENTS

Grantee will manage the Projects to ensure that its contractor completes the Project in accordance with this Agreement. Grantee shall submit to on-site monitoring of the Projects as deemed necessary by City.

Within 30 calendar days of completing a Project, Grantee shall submit a written report that documents in detail the Project's expenses.

EXHIBIT E
SCHEDULE OF PAYMENTS

Each month, Grantee shall provide the City Contact Person with a detailed invoice for design and construction costs incurred during the previous month related to implementation of the Project. The invoice shall include all payroll records required by the prevailing wage requirements of this Agreement and all documentation reasonably necessary for the City Contact Person to verify the various amounts on the invoice.

Within 30 calendar days of receiving the invoice, the City will provide Grantee with a written statement of any disputed costs on the invoice. The City will pay Grantee any undisputed amounts on the invoice within 30 calendar days of the City's approval of such undisputed amounts.

Notwithstanding anything to the contrary in this Agreement, the City will not pay Grantee any amount in excess of the Grant Amount, less City Costs.

EXHIBIT H
INSURANCE

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
4. Professional Liability Errors & Omissions for all professional services.

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

B. Minimum Limits of Insurance

Grantee shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury, and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Projects/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

4. Professional Liability Errors & Omissions \$1,000,000 per occurrence/ aggregate limit.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by City's Risk Manager. At the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, employees, agents, and contractors; or Grantee shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City's Risk Manager.

D. Other Insurance Provisions

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

1. Commercial General Liability and Automobile Liability Coverages

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

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

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

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

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

2. Workers' Compensation and Employers' Liability

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

3. All Coverages

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, cancelled, 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.

E. Acceptability of Insurers

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

F. Verification of Coverage

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

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

City of San Jose – Finance Department
Risk & Insurance
200 East Santa Clara St., 14th Floor
San Jose, CA 95113-1905

G. Subcontractors

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