

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

Grant Type:	Homeless	Contract No:	GF-19-013
Agency:	PATH		
Project:	Operation of the San José Emergency Interim Housing Program at Evans Lane		
Description:	The GRANTEE will be responsible for the setup, the day-to-day operations and property maintenance, as well as the provision of programs and services administered at the Emergency Interim Housing ("EIH") site operating an Emergency Non-Congregate Shelter (NCS) on site as described in this agreement. The provision of these operations and services are to provide a coronavirus disease ("COVID-19") – related response during the public health emergency, and to provide programs and services as emergency Bridge Housing Communities ("BHC") after the public health emergency.		
Funding Source:	CARES Act ESG CARES (Round 2)		
Grant Award Not to Exceed: Fiscal Year 2020-2021	CARES Act: \$2,028,044 ESG CARES Act: \$650,000 For a total not to exceed: \$2,678,044		
Payment Terms:	See EXHIBIT D		
Agreement Term:	Start Date:	6/15/2020	End Date: 06/30/2021

PARTIES TO AGREEMENT:

	GRANTEE	CITY OF SAN JOSE
Agency Name:	PATH	Housing Department
Address for Legal Notice: City/State/Zip Code:	340 N. Madison Ave. Los Angeles, CA 90004	200 E. Santa Clara St., 12 th Floor San José, CA 95113-1907
Attention:	Jennifer Hark Dietz, Executive Director	Jacky Morales-Ferrand, Director
Email Address:	jenniferd@epath.org	<u>Jacky.Morales-Ferrand@sanjoseca.gov</u>
Telephone No:	(323) 644-2225	(408) 535-3855
Taxpayer ID	95-3950196	
DUNS No.:	847856390	
Type of Entity:	501(c)(3) – Public Benefit Corporation	
State of Incorporation or Residency:	California	

CONTACT INFORMATION

GRANTEE Contract Manager:	Megan Colvard
Title:	Director, PATH San Jose
Telephone No:	(408) 753-8735
Email:	meganc@epath.org

CITY Representative:	Warda Ali
Title:	Analyst
Telephone No:	(408) 975-4419
Email:	warda.ali@sanjoseca.gov

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: Performance Measures/Numeric Goals
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Exhibit C: Fiscal Year 2020-2022 Budget Summary
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Exhibit D: Payments to Grantee

<input checked="" type="checkbox"/>	<input type="checkbox"/>	Exhibit E:	Grant Conditions
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Exhibit F:	Employee/Volunteer Clearance Verification and Compliance with the Child Abuse and Neglect Reporting Act
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Exhibit G:	Insurance
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Exhibit H:	Retroactive Services
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Exhibit I:	Federal Fund Provisions/Coronavirus Relief Fund Recipient Conditions

To the extent applicable, the following grant provisions are required for this AGREEMENT.


REQUIRED LANGUAGE ATTACHMENT

YES	N/A	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	City of San José Funding
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Federal
<input type="checkbox"/>	<input checked="" type="checkbox"/>	State
<input type="checkbox"/>	<input checked="" type="checkbox"/>	County
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Other Public Agency
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Private Funding Agency

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. Said AGREEMENT is hereby incorporated.

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

PATH, a California nonprofit public benefit corporation

GRANTEE Signature:  Date: 10/08/20
Print Name: Jennifer Hark Dietz
Title: Executive Director

CITY OF SAN JOSE, a California municipal corporation

LELAND WILCOX
Chief of Staff
City Manager's Office



Date: 10/9/2020

APPROVED AS TO FORM:

RENE ALEJANDRO
ORTEGA
Senior Deputy City Attorney



Date: 10/8/2020



**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

CITY OF SAN JOSE HOUSING DEPARTMENT GF GRANT AGREEMENT

This GF GRANT AGREEMENT ("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 ("CITY"), and, People Assisting The Homeless (PATH) a California nonprofit public benefit corporation ("GRANTEE"). CITY and GRANTEE are sometimes collectively referred to as "Parties" and individually as "Party".

RECITALS

WHEREAS, on March 4, 2020, the Governor of California proclaimed a State of Emergency (Executive Order N-25-20) to exist in California as a result of the threat of COVID-19; and

WHEREAS, on March 6, 2020, CITY issued a Proclamation of Local Emergency finding that the existence and threat of COVID-19 in the community give rise to conditions of extreme peril to the safety and health of persons within CITY; and

WHEREAS, the United States Secretary of Health and Human Services declared a public health emergency on January 31, 2020, and the President issued on March 13, 2020 a Proclamation on Declaring a National Emergency Concerning COVID-19 beginning March 1, 2020; and

WHEREAS, on March 16, 2020, the Santa Clara County Public Health Officer issued an Order to all residents to shelter in place and businesses to close except for essential activities, essential services and governmental services as defined under Section 10 of the Order; and

WHEREAS, on March 19, 2020, the Governor issued an Order (Executive Order N-33-20) that all individuals living in the State of California stay home or at their place of residence, except as needed to maintain continuity of operations for certain critical infrastructure sectors, to protect the public health of Californians, to mitigate the impact of COVID-19, and to ensure the healthcare delivery system is capable of serving all; and

WHEREAS, as a result of the Nationwide Proclamation, State Executive Orders, County Order, and City Proclamation of Local Emergency in response to COVID-19 ("COVID-19 EMERGENCY"), additional EMERGENCY NCS facilities must be brought on line to meet the public's need for places to accommodate persons with medical referral or

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

recommendation for isolation or quarantine as a social distancing measure (“EMERGENCY NCS NEED”); and

WHEREAS, the CITY desires to make available certain non-congregate facilities for referred families that have at least one individual at “high-risk” who have a medical referral or recommendation for isolation or quarantine in connection with COVID-19 (ELIGIBLE NCS FAMILIES); and

WHEREAS, this EMERGENCY NCS NEED is limited to that which is reasonable and necessary to address the public health needs of the COVID-19 EMERGENCY and are required pursuant to direction of the State and County health officials as well as CITY’s Proclamation in response to COVID-19; and

WHEREAS, the CITY issued a request for proposals on May 12, 2020, evaluated proposals submitted on May 28, and selected GRANTEE to provide the programs and services pursuant to this AGREEMENT; and

WHEREAS, GRANTEE is qualified to provide, and has agreed to provide, EMERGENCY NCS to ELIGIBLE NCS FAMILIES, in a safe, private, and secure environment as part of the City of San José’s Emergency Interim Housing program to meet CITY’s EMERGENCY NCS NEED; and

WHEREAS, CITY desires to grant Coronavirus Aid, Relief, and Economic Security (“CARES”) Act funding for the services in this AGREEMENT to be provided by GRANTEE; and

WHEREAS, CITY desires to grant Emergency Solutions Grant (ESG) Coronavirus Aid, Relief, and Economic Security (“CARES”) Act funding for the services in this AGREEMENT to be provided by GRANTEE; and

WHEREAS, it is understood and agreed that GRANTEE has commenced work and incurred costs prior to execution of this AGREEMENT in anticipation of its execution; and

WHEREAS, CITY agrees to reimburse GRANTEE for those costs in accordance with the terms of this AGREEMENT. However, in no event shall GRANTEE be reimbursed for costs incurred prior to June 15, 2020;

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

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1: PROGRAM COORDINATION

A. **CITY:** The Director of the CITY Housing Department, now Jacky Morales-Ferrand, also identified on the Summary Pages under City of San José (hereinafter “Director”), or his or her designee, shall be the CITY official responsible for the Program and shall render overall supervision of the progress and performance of this AGREEMENT by CITY. All services agreed to be performed by CITY shall be under the overall direction of the Director.

B. **GRANTEE:** GRANTEE shall identify a single project director, now Jennifer Hark Dietz, Deputy Chief Executive Officer, who shall have overall responsibility for the progress and execution of this AGREEMENT (“GRANTEE Contract Manager”) as also identified on the Summary Pages. 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 Contract Manager and GRANTEE staff will fully cooperate with the Director relating to the work or services provided hereunder.

SECTION 2: TERM OF AGREEMENT AND GRANT AWARD

A. The term of this AGREEMENT (“Term”) shall commence on June 15, 2020 (the “Start Date”) as also set forth in the Summary Pages and shall expire on June 30, 2021 (the “End Date”) as also set forth in the Summary Pages unless extended or sooner terminated in accordance with the terms of this AGREEMENT. Regardless of the date of execution of this AGREEMENT, this AGREEMENT is effective as of the Start Date.

B. The GRANTEE shall have the option to renew this AGREEMENT for an additional year at the end of the initial term, subject to satisfactorily providing the services referenced herein, and if additional funds are required, the appropriation of funds by the Council of the CITY. If this AGREEMENT is extended, a request to extend this AGREEMENT along with a description of the revised Scope of Services (attached hereto as **EXHIBIT A**) 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.

SECTION 3: GRANT SERVICES

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

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

SECTION 4: 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 and Reporting Schedule." Any costs incurred by GRANTEE above the Grant Award shall be at GRANTEE's sole cost and expense.

B. Upon execution of this AGREEMENT and encumbrance of funding, CITY shall provide an initial pre-payment to GRANTEE in the amount of Six Hundred Eighteen Thousand Two Hundred Fifty-Three Dollars (\$618,253) for EIH ramp-up during the first two (2) months of this AGREEMENT. GRANTEE will adhere to the advance payments requirements as set forth in EXHIBIT D entitled "Payments to Grantee and Reporting Schedule".

C. GRANTEE will provide CITY with invoices or financial reports signed by the GRANTEE Contract Manager or other authorized GRANTEE representative with authority to confirm the accuracy of reported expenditures on a form approved by 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.

D. CITY will review invoices or financial reports for adherence to AGREEMENT requirements and services, and authorize and release payment to GRANTEE based upon claims submitted and within thirty (30) calendar days from receipt of invoice or financial reports and provide complete supporting documentation which includes but is not limited to signed timecards, personnel activity reports, paid invoices, receipts, executed contracts, signed leases, payroll records, or any other documentation to prove the costs claimed for reimbursement, provided that GRANTEE is not in default under any provisions of this AGREEMENT.

E. CITY will not pay for unauthorized services rendered by GRANTEE or for claimed services which GRANTEE has not provided as required by this AGREEMENT. GRANTEE shall in no event be reimbursed for costs incurred prior to June 15, 2020.

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

F. City's Manager or designee may, without prior notice to GRANTEE, at any time in his or her absolute discretion, elect to suspend or terminate payment to GRANTEE, in whole or in part, terminate work or expenditures by GRANTEE under this AGREEMENT, or not to make any particular payment under this AGREEMENT or take any other action available in the event of any of the following occurrences:

1. If GRANTEE (with or without knowledge) shall have made any material misrepresentation of any nature with respect to any information or statements furnished to CITY in connection with this AGREEMENT;
2. If there is pending litigation with respect to the performance by GRANTEE of any of its duties or obligations under this AGREEMENT which may materially jeopardize or adversely affect the undertaking of or the carrying out of the Grant Services;
3. If GRANTEE, without having obtained CITY approval, has taken any action pertaining to the Grant Services which requires CITY approval;
4. If GRANTEE makes improper use of the Grant Award;
5. If GRANTEE fails to comply with any of the terms and conditions of this AGREEMENT including without limitation, GRANTEE's failure to carry out the Grant Services or other obligations as described in any Exhibit to this AGREEMENT; or
6. If GRANTEE submits to CITY any report which is incorrect or incomplete in any material respect, or is untimely.

SECTION 5: DEFAULT AND TERMINATION OF AGREEMENT

A. CITY may, through its Director, terminate this AGREEMENT without cause by giving GRANTEE thirty (30) calendar days' written notice.

B. Each of GRANTEE's obligations under this AGREEMENT shall be deemed material. If GRANTEE fails to perform any of its obligations under this AGREEMENT, or any other AGREEMENT with the CITY, CITY may terminate this AGREEMENT upon ten (10) days advance notice ("Notice Period") to GRANTEE, specifying GRANTEE's breach and providing GRANTEE with the opportunity to cure the specified breach within the Notice Period or in those instances where the specified breach cannot reasonably be cured within the Notice Period, the opportunity to commence to cure the specified breach. In the event GRANTEE fails to cure or to commence to cure the specified breach within the

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

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 5, GRANTEE shall have the following obligations:

1. No later than thirty (30) days following the date of termination GRANTEE shall refund to CITY any unused portion of the Grant Award, except that GRANTEE shall have no obligation to refund to CITY any portion of the Grant Award that was distributed in accordance with the terms of the AGREEMENT. GRANTEE shall also provide CITY with a written report detailing the expenditures, if any, from the Grant Award, including an accounting of its administrative expenses to the date of termination. GRANTEE shall refund to CITY any portion of the Grant Award designated for GRANTEE's administrative expenses which was not expended as of the date of termination. Nothing in this AGREEMENT shall be deemed to be a waiver of CITY's right to recover from GRANTEE any portion of the Grant Award that has not been spent in accordance with this AGREEMENT. Upon receipt, GRANTEE will be paid for services performed and reimbursable expenses incurred in compliance with the terms of this AGREEMENT to date of termination, unless other payment terms are explicitly provided in **EXHIBIT D**.
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. The Director is authorized to terminate this AGREEMENT on CITY's behalf.

F. If the term of this AGREEMENT is more than one (1) year, the funding in any year after the first year may be contingent upon past and pending performance as well as

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

future appropriation by the Council of the CITY, 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 6: ACCOUNTING AND FINANCIAL RECORDS

GRANTEE shall establish and maintain at all times, on a current basis in connection with the provision of Grant Services, an adequate accounting system in accordance with generally accepted accounting principles and standards and acceptable to Director covering all revenues, costs, and expenditures with respect to GRANTEE's performance under this AGREEMENT. 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 7: 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 8: RIGHT OF EXAMINATION AND AUDIT AND PRESERVATION OF RECORDS

GRANTEE agrees that the CITY's Manager, Auditor, Attorney or the Director, or any of their duly authorized representatives, shall have access to and the right to examine all facilities and activities of GRANTEE related to GRANTEE's performance of this AGREEMENT, including the right to audit, examine and make excerpts or transcripts of all contracts, subcontracts, invoices, payroll records, personnel records, and all other data or financial records relating to matters covered by this AGREEMENT at any time during the term of this AGREEMENT. GRANTEE shall cooperate with CITY in such audit, examination, further review and shall provide CITY with access to GRANTEE's staff and

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

to all relevant records, documents, and data, including but not limited to, management letters, board minutes, and payroll.

EXHIBIT B, titled “PERFORMANCE MEASURES/NUMERIC GOALS”, 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 audited financial reports.

SECTION 9: CITY ACKNOWLEDGMENT

GRANTEE shall acknowledge the support of CITY, where appropriate, in written documents and informational materials regarding Grant Services, the Grant Award or this AGREEMENT.

SECTION 10: INSURANCE

GRANTEE agrees to have the policies set forth in the attached **EXHIBIT G**, titled “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 as to form and content. These requirements may not be amended or waived unless approved in writing by the CITY’s Risk Manager. GRANTEE agrees to provide CITY with a copy of said policies, certificates and/or endorsements upon execution of this AGREEMENT.

SECTION 11: 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 be caused by the sole, active negligence or willful misconduct of CITY. In any action or claim against CITY in which GRANTEE is defending CITY, CITY shall have the right to approve legal counsel providing CITY’s defense and such approval shall not be unreasonably withheld. GRANTEE further agrees to release CITY from any and all claims for any damages, including property damage, injury or death occurring or arising out of use of CITY’s property, except as may be caused by the CITY’s sole, active negligence or willful misconduct.

B. The GRANTEE’s obligations under this indemnification provision shall survive the expiration or termination of this AGREEMENT.

SECTION 12: NOTICES

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

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 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 12.

SECTION 13: 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 14: 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 pursuant to anti-discrimination laws, including Title VI of the Civil Rights Act of 1964 and the Fair Housing Act, Section 109 of the Housing and Community Development Act of 1974, and Section 504 of the Rehabilitation Act of 1973, and in connection with or related to the performance of this AGREEMENT.

C. GRANTEE shall fully implement and comply with its City-approved Language Access Plan to ensure that Limited English Proficient clients have equal access to community programs and services.

D. GRANTEE shall include in all outreach and marketing materials, including public websites, an affirmative statement that they will provide services or benefits to all persons, including persons of the following protected categories: race, sex, color, age, religion, actual or perceived gender identity, sexual orientation, disability, ethnic or national origin, or familial status. Should the organization not comply with this requirement, the CITY will withhold any and all federal funding until such time as the organization is in compliance.

E. 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

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

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.

F. In the event there are conflicting terms in this Agreement or if the terms of this Agreement conflict with laws existing during the term of this Agreement, the stricter terms shall take precedent over the more lenient, unless otherwise stated. The following examples are intended to provide clarity on this point: (i) if the maximum administrative fee allowed under the Agreement is ten (10%), but federal law allows for only seven (7%), then the stricter seven (7%) maximum under federal law would govern; or, (ii) if the agreement provides GRANTEE retain records for five (5) years, but the federal regulations are amended during the term to be seven (7) years, then the stricter seven (7) year retention requirement governs.

SECTION 15: 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, 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 16: 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

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

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 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 17: 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 18: INTEGRATED DOCUMENT

This AGREEMENT, including the Summary Pages and any exhibits, are incorporated herein and embody the entire AGREEMENT between CITY and GRANTEE. No oral agreements or conversations with any officer, agent or employee of CITY shall affect or modify any of the terms or obligations contained in any documents comprising this AGREEMENT. Any such oral agreement shall be considered as unofficial information and in no way binding upon CITY. This AGREEMENT supersedes any prior agreement concerning this same subject matter which may have been executed by the Parties.

SECTION 19: 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 5 as related to repayment of the Grant Award shall apply.

SECTION 20: 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

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

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 21: 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 22: 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 22, shall be deemed a disallowed cost.

B. GRANTEE shall not expend any portion of the Grant Award for political advocacy efforts, whether for or against a political candidate, ballot measure or bill.

SECTION 23: 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 23, will be voidable at CITY's sole option.

SECTION 24: 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.

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

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 25: EMPLOYEES/VOLUNTEERS

A. Any and all personnel employed or volunteers retained by GRANTEE in conducting the operations of GRANTEE's program shall be qualified to perform the duties assigned to them by GRANTEE.

B. GRANTEE shall not hire employees or volunteers who will have supervisory or disciplinary authority over minors who have been convicted of any offense identified in California Public Resources Code Sections 5164. GRANTEE shall fully indemnify, defend, and hold harmless CITY for any such hiring. GRANTEE shall notify CITY in writing of any violation of this provision as soon as is reasonably practicable.

C. GRANTEE shall also not employ any person who is permitted to provide services requiring contact with children or providing food concessionaire services or other licensed concessionaire services in that area, unless GRANTEE has complied with the tuberculosis (TB) testing requirements set forth in Section 5163 of the California Public Resources Code.

D. Regardless of whether services have been provided prior to full execution of this AGREEMENT, GRANTEE certifies to the CITY that all services were provided in full compliance with the terms and provisions of this AGREEMENT.

E. To give effect to California Public Resources Code Sections 5163 and 5164, GRANTEE shall follow the procedures contained in **EXHIBIT F** attached hereto. In the event GRANTEE chooses a different national criminal database for complying with the Federal Bureau of Investigation (FBI) requirement for background checks, then such alternative database shall be subject to the CITY's prior written approval.

SECTION 26: CONTRACTOR'S FINANCIALS

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

A. City Council requires that each non-profit organization receiving Three Hundred Twenty Thousand Dollars (\$320,000) or more in funds from the CITY (in the aggregate) during any fiscal year which is either (i) grant funding other than construction funding and/or (ii) operating subsidy funding for operation of CITY facilities, must prepare and make available for public view on the internet, annual audited financial statements. The audited financial statements must be made available for view within one hundred fifty (150) days from the end of the non-profit's fiscal year (which period may be extended by the CITY's Manager based upon a showing of hardship or other good cause) and must be submitted to the CITY's Housing Department and posted at the GRANTEE's website at an easily accessible location. All audits must be performed by a certified public accountant currently licensed to practice in the State of California, must conform to generally accepted auditing standards and otherwise be in a form acceptable to the CITY.

B. Non-profits shall be required to comply with this requirement at the time that the non-profit has entered into one or more grant agreements or subsidy agreements with the CITY, which provide for the payment of an aggregate amount that equals or exceeds Three Hundred Twenty Thousand Dollars (\$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 Three Hundred Twenty Thousand Dollars (\$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 Three Hundred Twenty Thousand Dollars (\$320,000), and also to any other agreements with the CITY that are equivalent in purpose to a grant agreement or an operating subsidy agreement, regardless of the title of the agreement.

C. This posting requirement shall remain in effect until an entire fiscal year passes in which the non-profit does not have contracts with the CITY which provide for grants and/or subsidies from the CITY in an aggregate amount equaling or exceeding Three Hundred Twenty Thousand Dollars (\$320,000). Without limitation of any other remedy, GRANTEE's failure to comply with this requirement may be taken into consideration when evaluating GRANTEE's request for future grant funds or subsidies.

D. Organizations receiving an aggregate amount of Twenty-Five Thousand Dollars (\$25,000) or more in funds from the CITY during any fiscal year which is either (i) grant funding other than construction funding and/or (ii) operating subsidy funding for operation of CITY facilities, must prepare and submit via the CITY's WebGrants grant management system, ("WebGrants"), a completed Financial Dashboard. CITY's project director will provide a CITY approved Financial Dashboard template upon request. The Financial

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

Dashboard must be submitted via WebGrants within six (6) months from the end of GRANTEE'S fiscal year. This includes the GRANTEE's previous fiscal year, if that year ended within six (6) months of the commencement of this AGREEMENT.

SECTION 27: 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/your-government/environment/business-school-resources/for-schools/environmentally-preferable-procurement>.

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, etcetera.

SECTION 28: 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 CITY 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 5 of this AGREEMENT.

SECTION 29: DISQUALIFICATION OF FORMER EMPLOYEES

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

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 CITY 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 30: NO THIRD PARTY RIGHTS

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

SECTION 31: OWNERSHIP OF MATERIALS; APPLICANT/CLIENT REPORTS

GRANTEE agrees that it shall provide to CITY information regarding applicants or clients who applied for or received services under this AGREEMENT as needed for reporting and tracking required by applicable federal and state laws. Such information shall be reported in a format that does not identify the individual applicant or client. Training information or reports assembled by CITY from information provided by GRANTEE including, but not limited to, the number of clients enrolled; the number of clients that have completed training; and the number of clients who have entered employment in the area in which they have been trained is the property of CITY without restriction or limitation upon their use including the publication of such information.

SECTION 32: RECORDS

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

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

shall retain such records beyond five (5) years so long as any litigation, audit, dispute or claim is pending.

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.

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

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.

D. In the spirit of cooperation, CITY requests that GRANTEE undertake good faith efforts to assist CITY with the 2020 Census. Such efforts may include, but are not limited to, distributing marketing materials developed by the United States Census, CITY or County of Santa Clara to members of the community that GRANTEE provides services to, especially in hard to count census tracts as identified by the U.S. Census or the CITY, as well as providing awareness of and encouraging participation in the Census through GRANTEE's normal service delivery with special events, workshops, and other community activities, and through communication channels such as e-mail blasts, website, newsletters and social media.

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

**EXHIBIT A
SCOPE OF SERVICES**

1.01 Project.

GRANTEE shall implement the Emergency Interim Housing (EIH) Program (“Project”) to address the Emergency Non-Congregate Shelter (NCS) Need. The primary purpose of the Project is to provide emergency interim housing to vulnerable homeless families during the COVID-19 public health emergency in a safe, private, and secure environment. After the public health emergency, the site will operate as a Bridge Housing Community (BHC), offering onsite support services helping families build stability and self-sufficiency homelessness to stable housing. This will occur once a transition phase is executed between the EIH and BHC phases.

Project services will be provided by a consortium of two non-profit agencies that include PATH (as the lead agency) and Abode Services.

1.02 Project Area.

The Project Area is the incorporated area of the City of San José.

1.03 Location of Project.

Unless otherwise indicated, the Grant Services specified below will be offered at the following location:

Site Name
1. City site located at Evans Lane

1.04 Eligibility.

The EIH is an emergency interim housing program. During the emergency public health response to COVID-19, eligible participants will be ELIGIBLE NCS FAMILIES, referred by the City of San José and County of Santa Clara.

Within 30 days of termination of the COVID-19 Emergency, GRANTEE shall work with ELIGIBLE NCS FAMILIES, either referred or enrolled in a Supportive Housing program, to transition them to BHC PROGRAM PARTICIPANTS. For those ELIGIBLE NCS FAMILIES not enrolled in a Supportive Housing Program, GRANTEE shall attempt to transition those clients into alternative housing or shelter opportunities.

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

1.05 Description of Services.

The GRANTEE will be responsible for the day-to-day operations and property maintenance as well as programs and services administered at each site as described herein. The GRANTEE will carry out services and carry out the key responsibilities described herein.

The management and day-to-day operations and service provisions of the EIH may be conducted internally when appropriate, subcontracted through vendors as necessary, and/or coordinated through partner agencies and volunteer groups to supplement core facility amenities. During the COVID-19 EMERGENCY, the GRANTEE will provide appropriate on-site services or connection to suitable services to include case management, assistance providing connections to support services and educational support for children.

When the project operates as a BHC, the GRANTEE will provide support services that support self-sufficiency (e.g. financial workshops, resume building, nutrition, and conflict resolution) to participants with the goal of securing permanent housing for the participants. All vendors, partner agencies, subcontractors and/or volunteers providing services on site must be approved by the CITY prior to service delivery and will execute a right of entry agreement prior to entry on to the site.

GRANTEE will provide property management of the Emergency Interim Housing site, which includes, but is not limited to:

- Occupancy and compliance: managing leases/program agreements, program agreement collection (during BHC phase), resident noticing, recertifications, legal/regulatory compliance, reasonable accommodation response/tracking and file documentation/file retention;
- Routine and preventive maintenance: work orders, site cleanliness, plumbing, HVAC, electrical, safety;
- Pest control: performing regular pest control;
- Unit Turnovers: performing unit turnovers, including ensuring that all units have necessary furnishings;
- Safety: ensuring the site is safe and secure for residents and staff;
- Collaboration: Work closely with PATH services team to ensure to promote stable tenancy;
- After hours Response: Responsible for responding to after-hour maintenance and building emergencies and escalating to appropriate superiors. The night manager lives on-site in a furnished unit, under a licensed employee agreement

A-2

PATH– Emergency Interim Housing Program at Evans Lane
GF-19-013
T-39543/1733027

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

providing building oversight in the absence of management and reports incidents to the property management site team.

- Security: Responsible for all site security functions and supervision of security staff training, building entrance control and courtesy patrol and security contractual agreements.
- Waste Management: regular garbage removal from designated areas, keeping them clean, orderly and functional;
- Staff Coverage: ensuring coverage of maintenance and janitorial staff for everyday operations and to respond in a timely manner to any building concerns or problems; and
- Vendor Management: facilities and vendor management, including ensuring clean, sanitary and regularly maintained common spaces, community areas and shared facilities.

GRANTEE will also provide comprehensive safety and security protocols for the Evans Lane property. Responsibilities for a range of security functions, including but not limited to:

- Code Compliance: ensuring compliance with all building, fire and health codes;
- Safety Screening: screening residents and guests and elevating concerns or threats;
- Site Access: managing site access and enforcing visitor policies, including check-in and check-out, 24/7 site rounds, monitoring and review of security camera footage;
- Responding to Concerns: responding in a timely manner to resident and community concerns, in collaboration with PATH;
- Emergency Response: emergency and critical incident response and crisis intervention;
- Good Neighbor Policy: adherence to Good Neighbor Policy and regular communication with the community in partnership with PATH;
- Parking: parking and vehicle management;
- Emergency Response Plan: development of and adherence to an emergency response plan;
- Maintenance of Safety Systems: maintain building safety systems including fire alarms, sprinklers, gates and locks; and
- Nuisances: management of noise, graffiti, litter or other concerns of disturbances.

PATH will provide comprehensive supportive services, linkages, and case management to the families of Evans Lane, promoting health and safety as they obtain and transition to permanent homes. Responsibilities will include, but are not limited to:

- Leading community engagement efforts;

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

- Overseeing all on-site programming for families experiencing homelessness, manage the interim housing team, and coordinate with vendors;
- Supporting families with substance use concerns and provide individual and group programs to address risky behaviors that inhibit overall stability;
- Provide direct resident support to families, case management, linkages to supportive services and youth services, and housing navigation;
- Offer non-case management support to residents and work with volunteers and other agencies to provide enrichment for families and children;
- Assist residents with employment services including training, job search and application, resume and interview preparation, employment and retention counseling;
- Support residents in accessing housing opportunities including rental subsidies and affordable housing.

GRANTEE will develop an EIH Operations and Services Plan for use during the COVID-19 emergency response. When the program transitions to a BHC program, the GRANTEE will utilize the CITY approved Bridge Housing Communities (BHC) Operations & Services Plan (“O&S Plan”). The O&S Plan complies with the City of San José Bridge Housing Communities *Standards for Operations* in 5.09.600 of the City’s Municipal Code.

The GRANTEE will also provide appropriate Housing Problem Solving services for the EIH and BHC participants to ensure they can obtain permanent and temporary housing solutions. A newer strategy, Housing Problem Solving assists participants to identify immediate alternate housing arrangements and, if necessary, connects them with services and financial assistance to help them retain or return to housing. The goal is to divert people from entering the homeless assistance system in the first place but there can be other entry points to which assistance can be provided. These services will also be applicable to GRANTEE’S Street Outreach program.

1.05.1 Site Governance

The GRANTEE will be responsible for all aspects of site governance including day-to-day operations of each site. Among other tasks, GRANTEE will develop the following:

- Establish regular hours of operation
- Site amenities and community space usage and schedules
- Participant rules and expectations
- EIH Staffing Plan
- Manage Visitor Schedule

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

Deliverable #1	<p>GRANTEE will develop and implement an EIH Good Neighbor Plan with policies and external activities that foster positive external relations. The GRANTEE will provide a Good Neighbor Plan to the CITY by August 17, 2020 for approval. The plan must detail:</p> <ul style="list-style-type: none">• Concerns about the facility are addressed in a timely manner.• Program Director or Manager or agency management will attend neighborhood meetings related to the project.• Program Director, Manager or agency management will attend Community Advisory Committee meetings for the project.• Establish communication protocol with neighbors (includes phone and email)• Actively discourage and address noise from program clients.• Discourage loitering in the area surrounding the site.
Deliverable #2	<p>GRANTEE will develop policies and procedures by August 24, 2020 and approved by the Housing Department that outline.</p> <ul style="list-style-type: none">• Client responsibilities and expectations• Operational guidelines and management plans• Public health related safety and workplace safety protocols
Deliverable #3	<p>GRANTEE will develop staffing plan for CITY approval to fully operate the EIH site by August 17, 2020. Updated plan to include status of full hiring and job descriptions of staff of the site shall be submitted to the CITY by August 24, 2020.</p>
Deliverable #4	<p>GRANTEE will recruit and hire appropriate staff per CITY approved staffing plan to operate EIH site by August 28, 2020. Hiring deadline for the site at Evans Lane will be stated in writing by the CITY 30 days prior to projected opening date through a Notice to Proceed.</p>
Deliverable #5	<p>GRANTEE will purchase EIH furniture, supplies, and equipment for the EIH site by upon receipt of advance payment.</p>
Deliverable #6	<p>GRANTEE will develop a list of subcontractors required to operate and maintain the EIH site. The list shall include the vendor type, anticipated scope of services, estimated costs, schedule for procurement. The list must be approved by the CITY within 30 days of signing this AGREEMENT.</p>

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

1.05.2 Site Operations

The GRANTEE will be responsible for all aspects of site day-to-day operations of each site. Operations will include property management services, maintenance, repairs, security and landscaping. Operations will also include planning and execution of onsite services. Finally, operations also includes development of management plans for the site that addresses: a) security, hours of operation and other property management issues and b) public health and safety related workplace safety protocols as recommended by the Centers for Disease Control and Prevention and Santa Clara Public Health Department.

1.05.3.1 Participant Management

The GRANTEE will be responsible for all aspects of EIH & BHC participant management from initial coordination during COVID-19 EMERGENCY phase to the BHC phase. Among other responsibilities, the GRANTEE will be responsible for developing processes and managing the following in accordance with the Operations and Services Plan:

- Coordinating prospective participant referrals
- Intake Process (e.g. eligibility verification and application review)
- EIH & BHC enrollment, participant interviews, orientations, and move-in procedures
- Participant Program Fee Calculation (if applicable during BHC phase)
- Day-to Day EIH participant oversight
- Program administration
- Resident Recertification
- Complaints, Terminations, and appeals

Deliverable #7	On a semi-annual basis, GRANTEE will generate a report using Homeless Management Information System (HMIS) with all EIH & BHC program participants that exited to permanent housing during the prior half year to illustrate the number and/or percentage of participants that remain housed for a period of at least 6 months after exiting EIH or BHC (as applicable). The report will include the participant, housing status and referrals, income, and length of time housed. These reports will be provided to the CITY.
Deliverable #8	In BHC phase, GRANTEE will develop an applicant tracking tool to capture pending applications, the current number of EIH participants, move-outs, and closed applications. Additional information to include the number of applications received,

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

	status of the application, reasons for denials of applications (for applications deemed not appropriate) will be provided twice a month to CITY.
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1.05.3.2 BHC Phase Only: Program Participation Fee

Consistent with City and County supportive housing programs, if applicable, GRANTEE will ensure BHC participants pay monthly BHC Program Participation fees unless otherwise instructed by the CITY. The GRANTEE shall develop a Program Participation Fee schedule ensuring Participants ability to pay. Fees shall not exceed 30% of their incomes in compliance with the requirements of Assembly Bill 2176. All participants with incomes will be required to pay a minimum monthly fee of \$20, unless otherwise instructed by the CITY. Fee Schedule shall be reviewed and approved by the CITY prior to implementation.

Deliverable #9	<p>During COVID-19 EMERGENCY, GRANTEE will develop BHC participant's occupancy tracking tool prior to opening and provide reports on a weekly basis to CITY. The report shall include:</p> <ul style="list-style-type: none">• BHC Site/location• Participant Information• Participant's income level & percentage of AMI• Occupancy date• Unit # <p>Prior to BHC Phase, GRANTEE will develop BHC participant occupancy tracking tool prior to opening and provide reports on a quarterly basis to the CITY. The report shall include:</p> <ul style="list-style-type: none">• BHC Site/location• Participant information• Participant income level & percentage of AMI• Occupancy date• Unit #• Supportive housing agency Information• Program participation fee requirement• Program participation fee payments
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**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

1.05.3.3 Site Maintenance and Repairs

The GRANTEE will establish a maintenance and repair plan for each site. The plan will include:

Deliverable #10	<p>GRANTEE will utilize the maintenance plan as outlined in the Operations and Services Plan. The purpose of the plan will be to ensure that the EIH and the 100-foot radius surrounding it are maintained in a clean and safe, condition. The Plan should include:</p> <ul style="list-style-type: none">• Grounds keeping plan• Staffing plan to include specific roles and responsibilities• Processes to address scheduled and unscheduled repairs• Maintenance and repair resources to include procurement requirements• Maintenance and inspection schedules stated in Operations & Services Plan (e.g. unit inspections, outlets, and smoke alarms)• Unit inspection checklist• Vector control policies and procedures
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1.05.4 Security

The GRANTEE shall hire an experienced private security firm in good standing, to (a) provide on-site monitoring and (b) monitor the immediate area surrounding consistent with the CITY approved security manual. The GRANTEE and its security firm will coordinate regularly with local law enforcement to ensure open and clear communication is maintained. The GRANTEE shall maintain private security for the duration of this agreement. GRANTEE shall maintain communication with City of San Jose staff for all incidents involving local law enforcement.

Deliverable #11	GRANTEE will develop a security manual that will include security post, de-escalating protocols, front desk duties & documentation to be reviewed and approved by CITY by August 28, 2020.
Deliverable #12	GRANTEE will procure and establish an agreement with a security firm by August 26, 2020. The CITY shall review and approve the security agreement prior to execution.

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

Additionally, the GRANTEE will work with program participants, staff, and volunteers to regularly monitor and track site ingress and egress.

1.05.5 Operations and Maintenance Reserve Account

The GRANTEE will open and maintain an Operations and Maintenance Reserve Account ("Reserve Account") for the EIH/BHC site, with funds from this grant, at a bank approved by the CITY.

If determined to be applicable during the BHC Phase, the GRANTEE will collect monthly BHC Program Participation fees from participants and deposit those monies into the Reserve Account. The GRANTEE will track all deposits and expenditures from the Reserve Account and provide the CITY with monthly account statements. The GRANTEE will maintain a minimum account balance of \$10,000 in the Reserve Account as a set aside for emergency repairs. The GRANTEE will use funding from this Reserve Account in excess of the \$10,000 for BHC maintenance, day-to-day repairs, and regular approved operation expenses. If there are insufficient funds in excess of the \$10,000 in the Reserve Account to cover expenses for the billing period, the GRANTEE will submit invoices for the remaining costs for reimbursement to the CITY in accordance with this AGREEMENT. GRANTEE will provide an account summary and any invoices with each monthly reimbursement request. Eligible expenses include:

1. Line items within the approved Budget attached to this AGREEMENT as **Exhibit C**.
2. Maintenance and repairs to the EIH site or structures (repairs exceeding \$1,000.00 require CITY approval prior to repair).
3. Emergency repairs may be completed without CITY approval prior to repair. An emergency repair is defined as a health and safety issue for which immediate action must be taken to prevent harm to a person or extensive damage to the property. Documentation must be submitted as soon as possible after the repair has been completed to substantiate urgent need.
4. Other uses may be approved on a case-by-case basis if they are consistent with the purpose of this AGREEMENT.

GRANTEE is authorized to accept donations (in-kind or monetary) directed to both emergency COVID-19 EIH phase and BHC phase for uses consistent with this AGREEMENT and AB 2176. Monetary donations will be held in a separate account and directed to specific activities, events, or projects specified by donors. GRANTEE will track all donations directed to the EIH and provide the CITY with an accounting on a semi-

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

annual basis. Management and General shall be consistent with the approved Budget attached to this AGREEMENT as Exhibit C.

Deliverable #13	GRANTEE will establish a reserve account by August 31, 2020.
Deliverable #14	GRANTEE will develop an account summary report and provide updates monthly to CITY with all reimbursement requests.

1.05.6 Emergency Planning

The GRANTEE shall provide an emergency response plan for staff and EIH participants, as well as emergency incident documentation, a manual with protocols, evacuation map, contact sheet, and site map for SJFD and SJPD. The GRANTEE review and update the Plan regularly. The Plan shall include:

- An outline of emergency protocols to deal with fire, earthquake, flood, and other potential emergencies
- Address required emergency equipment including regular maintenance and repairs
- Ongoing education of EIH staff and participants
- Coordinate with CITY staff for any incidents involving emergency services.
- A list of emergency supplies and equipment along with the inspection and maintenance schedule to ensure the BHC is adequately supplied and equipment is in good working order.
- Public Health and Safety protocols for COVID-19 positives or persons under investigation (PUI) during emergency COVID-19 response phase of program.

Deliverable #15	GRANTEE will develop emergency incident documentation, manual with protocols, evacuation map, contact sheet, and site map for SJFD and SJPD. The manual shall be approved by the City prior to opening and included in the O&S Plan.
Deliverable #16	GRANTEE will develop public health related safety and workplace safety protocols as recommended by the Centers for Disease Control and Prevention and Santa Clara County Public Health.

1.05.7 Service Coordination

A-10

PATH– Emergency Interim Housing Program at Evans Lane
GF-19-013
T-39543/1733027

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

During the COVID-19 EMERGENCY, GRANTEE will coordinate appropriate service for participants to shelter safely. During BHC phase, every participant must have a housing plan with a path to transition to permanent housing. The GRANTEE will be responsible to ensure each resident has an individual housing plan through their supportive housing service provider and is connected to appropriate services either through the EIH service coordination or through the participant's assigned supportive housing case manager. The GRANTEE will monitor the progress of each participant and their progress toward their housing goals.

1.05.7.1 COVID EIH & BHC Phases: Drop-in Services

Drop-in services are intended to provide program participants with resources to support their day-to-day needs within the EIH as well as information and linkage to external resources such as health and employment services. Drop-in services will be available during regular business hours to all EIH & BHC program participants living onsite.

1.05.7.2 EIH & BHC Phase: Support Services

While each BHC participant will have an assigned case manager and supportive services through a supportive housing program, the GRANTEE will provide additional support services to the BHC participants to augment their supportive housing Case Management.

Deliverable #17	<p>GRANTEE will develop a services plan to ensure each EIH & BHC program participant is appropriately connected to services necessary to meet the goals of their individual housing plan. Plan shall minimally include:</p> <ul style="list-style-type: none">• Initial assessment of EIH & BHC participants housing plans• Resource guide that includes<ul style="list-style-type: none">• Menu of additional services that the operator provides or can connect participants with• List of collaborating agencies and their services• Workshop and training schedules• Assessment methods• 3rd party partnerships• Goals and objectives <p>The GRANTEE must have an approved services plan in place by August 31, 2020.</p>
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**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

Deliverable #18	GRANTEE will develop a job and housing opportunities board for residents prior to site opening.
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1.05.8.3 *BHC Phase: Workshops and Learning Opportunities*

GRANTEE will create and implement a plan to provide BHC participants with on-site self-sufficiency workshops. The purpose of the plan will be to ensure participants have access to learning opportunities that cater to each participant's progression in achieving self-sufficiency.

Deliverable #19	GRANTEE will develop and coordinate workshops and learning opportunities to promote self-sufficiency and enhance participant's ability to successfully transition to permanent housing. The GRANTEE will survey participants and their case managers within the first 60 days of operation to assess the areas of greatest need and provide a workshop and training schedule covering at least a three-month period. The GRANTEE shall submit the proposed schedule to the City for review and approval at the end of the 60-day assessment and once approved, shall commence workshops within 90 days of opening.
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1.06 Reporting Requirements.

Monthly Reports. At the end of each month through December 30, 2020, GRANTEE shall provide a report to the Housing Department via email, the number of EIH Coordinated Service Sessions and Self-Sufficiency Workshops completed.

Financial Report. GRANTE shall submit monthly invoices to the Housing Department, via CITY's WebGrants system, within fifteen (15) days from the end of each month during the term of this AGREEMENT. By January 6, 2020, GRANTEE shall provide a basic financial report to the Housing Department via email, the total amount spent in City CARES Act funds through December 30, 2020.

Quarterly Reports. At the end of each quarter, GRANTEE shall report to the Housing Department, via the CITY's WebGrants system, the performance measures as defined in Section 1.01 of **EXHIBIT B** to this AGREEMENT. The report at a minimum shall include:

- (a) a description of how the activities being provided under this grant contribute to meeting performance measures stated in the contract,

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

- (b) a detailed description of how the measurement methodology was implemented and how information was collected,
- (c) a detailed description of the methodology for selecting the sample size and the population to measure including the size of the sample.

Methodology shall include a description of when and how information was collected, the total population being studied, the sample size used for the study, the method used to determine the sample size, and the method for selecting the sample.

1.07 Reporting Schedule. All required reports shall be submitted to the Housing Department, via the CITY's WebGrants system, no later than fifteen (15) calendar days after the end of the fourth quarter.

1.08 Cost Reimbursement. GRANTEE will be reimbursed on a monthly basis, for approved invoices submitted pursuant to this AGREEMENT. Requests for reimbursement will be made on a form and in the manner prescribed by the CITY under provisions as set forth in **EXHIBIT D**, titled "PAYMENTS TO GRANTEE".

1.09 Additional Provisions. None.

CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT

EXHIBIT B

Performance Measures/Numeric Goals for FY 20-21

Operator will open EIH residence for move in by the beginning of Q1 FY 20-21, once the site construction is complete, and the CITY deems each site ready for residence. Performance measures related to the operations and services of the EIH are included in this exhibit. Once the COVID-19 emergency is over, the site will transition into a BHC, of which the performance measures are included in this exhibit.

1.01 Unduplicated Participants.

Proposed total number of Unduplicated Participants, adults and children, to be served by this Project only. For purposes of this AGREEMENT, “UNDUPLICATED PARTICIPANTS” shall be defined as participants who receive services at least once a year but who may not be counted more than once in that year. GRANTEE shall retain records documenting eligibility. Such records shall include total household income, household composition (number of households with children under age 18 and number of children under age 18 who benefited from services), gender of head of household, race, ethnicity and disability data.

	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Total
EIH Phase	45	85	10	0	140
BHC Phase	N/A	N/A	10	20	30

* assuming the construction of the EIH site is complete at the start of quarter 1.

1.02 Services. Throughout the term of this AGREEMENT, GRANTEE shall provide the following services to participants:

Activity 1: Number of EIH & BHC coordinated service sessions. (Coordinated service session is defined as a case management session either by appointment or drop-in in which GRANTEE is offering one-on-one support to EIH & BHC participants.)

	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Total
EIH Phase	60	300	360	360	1,080
BHC Phase	N/A	N/A	20	60	80

Activity 2: Number of self-sufficiency workshops on-site. (Self-sufficiency workshops defined as a group training/discussion designed to educate or inform the program participant in some form of life skill.)

	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Total
BHC Phase	N/A	N/A	6	6	12

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

Activity 3: *Number of BHC volunteers. (BHC Volunteers defined as those that volunteer for programmatic roles in the BHC program.)*

	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Total
BHC Phase	N/A	N/A	24	24	48

Activity 4: *Number of Housing Problems Solved. (A solved housing problem is defined as a solution resulting in temporary or permanent housing).*

	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Total
EIH Phase	5	5	5	5	20
BHC Phase	N/A	N/A	2	2	4

1.03 Outcome Measure Statement and Measurement Methodology.

Measurement Methodology.

Outcome Measure #1	50% of BHC participants will exit to permanent housing destinations within 120 days of entry.			
Measurement Methodology	HMIS Methodology: Add participant universe for EIH services during the current reporting period. Of the universe, add up those in EIH who exited to permanent housing destinations within 120 days of enrollment. Divide the total from step 2 by the total from step 1.			
	Quarter 1	Quarter 2	Quarter 3	Quarter 4
Outcome Goal	N/A	50%	N/A	50%

Outcome Measure #2	90% of Participants residing at the EIH and BHC for 30 days or more will report being satisfied with EIH and BHC services			
Measurement Methodology	Add the total number of clients who are residing at the EIH ad BHC least 30 days and divide the total by the number of clients who have reported being satisfied with their services.			
	Quarter 1	Quarter 2	Quarter 3	Quarter 4
EIH Phase	N/A	90%	NA	90%
BHC Phase	N/A	N/A	N/A	90%

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

EXHIBIT C

Fiscal Year 2020-2021 BUDGET SUMMARY

City CARES Act funding shall cover expenses incurred between June 15, 2020 and December 30, 2020. City CARES Act funding shall be expended by December 30, 2020. ESG CARES funding shall cover expenses incurred between December 31, 2020 and June 30, 2021.

AGENCY	People Assisting the Homeless (PATH)			
NAME OF PROGRAM	Emergency Interim Housing Program at Evans Lane			
YEAR OF FUNDING	2020-2021			
	FTE	FUNDING SOURCE	FUNDING SOURCE	TOTAL
Personnel		CITY CARES Act	ESG CARES Act	
Director of Community Affairs	0.25	\$20,825.00	\$6,675.00	\$27,500.00
Director of Programs	0.15	\$13,631.00	\$4,369.00	\$18,000.00
Program Manager	1.00	\$56,796.00	\$18,204.00	\$75,000.00
Lead Case Manager	1.00	\$49,224.00	\$15,776.00	\$65,000.00
Harm Reduction Specialist	1.00	\$41,651.00	\$13,349.00	\$55,000.00
Case Manager #1	1.00	\$47,330.00	\$15,170.00	\$62,500.00
Case Manager #2	1.00	\$47,330.00	\$15,170.00	\$62,500.00
Case Manager #3	1.00	\$47,330.00	\$15,170.00	\$62,500.00
Resident Associate #1	1.00	\$31,806.00	\$10,194.00	\$42,000.00
Resident Associate #2	1.00	\$31,806.00	\$10,194.00	\$42,000.00
Resident Associate #3	1.00	\$31,806.00	\$10,194.00	\$42,000.00
Sr. Property Manager	1.00	\$64,369.00	\$20,631.00	\$85,000.00
Sr. Maintenance Technician	1.00	\$44,104.00	\$14,136.00	\$58,240.00
SUB TOTAL	11.4	\$528,008.00	\$169,232.00	\$697,240.00
Fringe Benefits				
FICA (Employer)	8%	\$40,393.00	\$12,946.00	\$53,339.00
SUI	0%	\$1,056.00	\$338.00	\$1,394.00
Medical, Dental & Life	13%	\$69,997.00	\$22,436.00	\$92,433.00
Retirement	1%	\$5,280.00	\$1,692.00	\$6,972.00
Worker Compensation	4%	\$21,120.00	\$6,769.00	\$27,889.00
Staff Parking stipen \$100 per staff x 12 months	2%	\$9,997.00	\$3,203.00	\$13,200.00

C-1

PATH – Emergency Interim Housing Program at Evans Lane
GF-19-013

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DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

Payroll/Benefits Services Fees				\$0.00
SUB TOTAL	28%	\$147,843.00	\$47,384.00	\$195,227.00
Operating Costs				
Office Supplies		\$9,557.00	\$3,063.00	\$12,620.00
Program Supplies		\$21,265.00	\$6,815.00	\$28,080.00
Communication		\$13,767.00	\$4,413.00	\$18,180.00
Printing/Advertising		\$6,494.00	\$2,081.00	\$8,575.00
Travel/Mileage		\$3,335.00	\$1,069.00	\$4,404.00
Occupancy		\$46,009.00	\$14,746.00	\$60,755.00
Insurance		\$10,261.00	\$3,289.00	\$13,550.00
Equipment Rental/Maintenance		\$8,709.00	\$2,791.00	\$11,500.00
Audit Fees		\$3,559.00	\$1,141.00	\$4,700.00
Database Fee		\$12,230.00	\$3,920.00	\$16,150.00
Janitorial Services		\$26,505.00	\$8,495.00	\$35,000.00
Security Services		\$365,012.00	\$116,988.00	\$482,000.00
Laundry Machine Leasing		\$9,163.00	\$2,937.00	\$12,100.00
Utilities		\$75,350.00	\$24,150.00	\$99,500.00
Pest Control		\$8,709.00	\$2,791.00	\$11,500.00
Landscaping		\$22,719.00	\$7,281.00	\$30,000.00
Maintenance		\$49,451.00	\$15,849.00	\$65,300.00
Shared Space & Office Furnishing		\$42,654.00	\$13,671.00	\$56,325.00
Room Furnishing-bed frames, mattressess, appliances, etc		\$81,900.00	\$26,250.00	\$108,150.00
Housing Problem Solving Flex Funds		\$234,552.00	\$75,175.00	\$309,727.00
Surveillance Equipment		\$94,661.00	\$30,339.00	\$125,000.00
SUB TOTAL		\$1,145,862.00	\$367,254.00	\$1,513,116.00
Indirect Costs				
Indirect Costs		\$206,331.00	\$66,130.00	\$272,461.00
SUB TOTAL		\$206,331.00	\$66,130.00	\$272,461.00
TOTAL		\$2,028,044.00	\$650,000.00	\$2,678,044.00

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

**EXHIBIT D
PAYMENTS TO GRANTEE**

A. CITY agrees to reimburse GRANTEE for the expenses incurred as set forth in this Agreement in an amount of money not to exceed the amount set forth in this Agreement. Such sum shall be expended and paid by CITY to GRANTEE on a cost reimbursement basis upon City approval (reimbursement basis by default) for expenses actually incurred and paid by GRANTEE during the term of this Agreement for the cost categories appearing in EXHIBIT C, as described in subsection B below. Provided however, the City will make a pre-payment as described in subsection D.

B. Payments to GRANTEE after all prepaid funds are expended and invoices received, reimbursements shall be made within thirty (30) days of

- (1) (a) receipt by CITY of statement or statements in a form approved by CITY specifying in detail the costs incurred by and paid by GRANTEE during the month for which payment is requested, and

(b) documents evidencing these costs, including but not limited to, paid invoices; and
- (2) the determination by CITY, in its sole discretion, that expenses for which GRANTEE seeks reimbursement can properly be paid under this Agreement and such statement(s) and supporting documents reasonably evidencing that the expenses have been incurred and paid by GRANTEE. In making such determination, CITY may, but need not, rely upon the certification by GRANTEE that the items appearing on said statement and supporting documents are eligible items for reimbursement under this Agreement. Such determination by CITY shall in no way constitute a waiver by CITY of its right to recover from GRANTEE the amount of money paid to GRANTEE on any items which is not eligible for payment under this Agreement.

C. "Expenses eligible for reimbursement" shall mean those expenses which are necessary to meet, in part, the housing needs of the very low-, low-, and moderate income Participants in the City of San José within the County of Santa Clara.

D. Upon execution of this AGREEMENT and encumbrance of funding, CITY shall provide an initial pre-payment advance to GRANTEE in the amount of Six Hundred Eighteen Thousand Two Hundred Fifty-Three Dollars (\$618,253) for services and capital

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

required to set up the EIH prior to opening of the site pursuant to this AGREEMENT. The initial pre-payment advance will be divided into two separate payments. The first pre-payment will be identified as the "Capital Advance" in the amount of Two Hundred Eighty-Nine Thousand Four Hundred Seventy-Five Dollars (\$289,475). These funds will be used for one-time purchases, equipment, and supplies initially required to open each EIH such as appliances, furniture, and security cameras consistent with the approved Budget. The GRANTEE shall complete all purchases by August 31, 2020. Any unspent funds from the Capital Advance will be recaptured by the City on January 1, 2021. The second pre-payment will be identified as the "Operations Advance" in the amount of Three Hundred Twenty-Eight Thousand Seven Hundred Seventy-Eight Dollars (\$328,778). The Operations Advance is to fund operating expenses for one month in advance. Within fifteen (15) days from the end of the month, GRANTEE shall report to CITY all expenditures during the prior month on a form and in manner prescribed by the CITY. CITY will review the invoices or financial reports for adherence to AGREEMENT. Upon receipt and approval of the previous month's expenses, the CITY shall disburse funds equal to the previous months approved expenses, minus any funds not expended in the previous month to replenish the Operations Advance for the following month's operating expenses.

E. Within fifteen (15) days from the end of each month during the term of this AGREEMENT, GRANTEE shall report to CITY all expenditures during the prior month on a form and in manner prescribed by the CITY. CITY will review the invoices or financial reports for adherence to AGREEMENT requirements and services, and authorize and release of Grant funds to GRANTEE to reimburse the expenditures. Payment shall be contingent upon GRANTEE's submittal of documentation of expenditure of funds, provided that GRANTEE is not in default under any provisions of this AGREEMENT

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

EXHIBIT E
GENERAL FUND GRANT CONDITIONS

City CARES Act Conditions

CITY has created grant funding ("Fund") as a source of revenue to meet, in part, the housing needs of the very low-, low-, and moderate income participants in the City of San José, County of Santa Clara, California ("Project Area").

The "Project Area" means that no less than one hundred percent (100%) of the persons benefited and served under this AGREEMENT are participants of the City of San José within the County of Santa Clara, State of California.

The CITY administers the Fund, and shall grant funds from the Fund to GRANTEE as reimbursement to defray the expenses GRANTEE incurs to implement the Project described in this AGREEMENT.

SECTION 1. FINANCIAL OBLIGATIONS OF GRANTEE

GRANTEE agrees to the following:

1.01 Fiscal Responsibilities of GRANTEE.

GRANTEE shall:

1. Appoint and submit to CITY, the name of a fiscal agent who shall be responsible for the financial and accounting activities of the GRANTEE, including the receipt and disbursement of GRANTEE funds.
2. Establish and maintain a system of accounts that shall be in conformance with generally accepted principles of accounting for budgeted funds. Such system of accounts shall be subject to review and approval of CITY.
3. Document all 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.

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

4. Submit to the CITY, within fifteen (15) working days of the end of the preceding month, requests for reimbursement, together with documentation required by CITY.
5. Certify insurability subject to CITY approval as outlined in **EXHIBIT G** to the AGREEMENT, titled "INSURANCE."
6. 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.
7. Administer 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.
8. 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.

1.02 Records, Reports, and Audits of GRANTEE.

1. Establishment and Maintenance of Records. GRANTEE shall maintain records, including but not limited to, books, financial records, supporting documents, statistical records, personnel, property, and all other pertinent records sufficient to reflect properly:
 - a. All direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred to perform this Agreement, and
 - b. All other matters covered by this AGREEMENT. Such records shall be maintained in accordance with requirements now or hereafter prescribed by CITY.
2. Preservation of Records. GRANTEE shall preserve and make available its records:
 - a. for a period of four (5) years after final payment is made using Coronavirus Relief Fund monies; or
 - b. for such longer period, if any, as may be required by applicable law; or

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

- c. if this AGREEMENT is completely or partially terminated, for a period of four (4) years from the date of any resulting final settlement.
- 3. Examination of Records; 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 (5) 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 (5) years from the date of any resulting settlement;
 - d. 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, all as set forth in Section 1.02 subsection 4, below. 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.
 - e. Recipients of Coronavirus Relief Funds payments shall maintain and make available to the Treasury OIG upon request all documents and financial records sufficient to establish compliance with subsection 601(d) of the Social Security Act, as amended, (42 U.S.C. 801(d)).

Records to support compliance with subsection 601(d) may include, but are not limited to, copies of the following:

 - a) general ledger and subsidiary ledgers used to account for (a) the receipt of Coronavirus Relief Fund payments and (b) the disbursements from such payments to meet eligible expenses related to the public health emergency due to COVID-19;

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

- b) budget records for 2019 and 2020;
- c) payroll, time records, human resource records to support costs incurred for payroll expenses related to addressing the public health emergency due to COVID-19;
- d) receipts of purchases made related to addressing the public health emergency due to COVID-19;
- e) contracts and subcontracts entered into using Coronavirus Relief Fund payments and all documents related to such contracts;
- f) grant agreements and grant subaward agreements entered into using Coronavirus Relief Fund payments and all documents related to such awards;
- g) all documentation of reports, audits, and other monitoring of contractors, including contractors, including subcontractors, and grant recipient and subrecipients;
- h) all documentation supporting the performance outcomes of contracts, subcontracts, grant awards, and grant recipient subawards;
- i) all internal and external email/electronic communications related to use of Coronavirus Relief Fund payments; and
- j) all investigative files and inquiry reports involving Coronavirus Relief Fund payments.

4. Audits.

- a. Independent Audits. City Council requires each non-profit organization receiving \$320,000 or more in funds from the CITY (in the aggregate) during any fiscal year, to prepare and make available for public view on the internet, annual audited financial statements. See Section 27 of the AGREEMENT for the CITY's requirements.

If the \$320,000 threshold is not met, the CITY's Grant Manager has authority to impose the requirement to obtain an independent audit. GRANTEE shall be notified if this requirement is to be imposed and the requirement will be included in **EXHIBIT A** to the AGREEMENT.

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

If an audit is required, the following provisions apply:

- (a) Funds may be set aside in GRANTEE's budget in an amount equal to CITY's fair share of GRANTEE's cost of an independent audit, if required, with prior approval from CITY. A separate line item will be established.
- (b) GRANTEE shall enter into an agreement with an independent public accountant certified to practice in the State of California no later than sixty (60) days before the end of this AGREEMENT calling for an audit to be done for the entire year. The audit must be in conformance with the applicable funding source.
- (c) The audit must be completed and sent to CITY's Department of Housing staff within one hundred fifty (150) days from the end of GRANTEE's fiscal year.
- (d) Audit Standards. The independent fiscal audit shall conform to generally accepted governmental auditing principles. Such audits shall identify the funds received and disbursed under this AGREEMENT and include 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;
 - (iii) Statement of Functional Expenses;
 - (iv) Statement of Auditor's Report;
 - (v) Communication of Internal Control Related Matters Identified in an Audit (Management Letter) from Auditor
 - (vi) GRANTEE shall also submit to the agency a written management response to the findings of the Internal Control Matters.
- (e) Single Audits. For GRANTEES that expend \$750,000 or more of federal financial assistance in a fiscal year (in aggregate, from all funding sources), 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:
 - (i) Expenditures submitted for reimbursement are allowable under 2 CFR 200;
 - (ii) Expenditures are in compliance with the grant agreements between the CITY and GRANTEE; and

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

- (iii) Applicable laws and regulations. Further, the independent public accountant certified to practice in the State of California shall render an opinion as to whether the Expenditures complied with the Single Audit Act of 1984 and Appendix XI to 2 CFR Part 200— Compliance Supplement (previously known as the Circular A-133 Compliance Supplement).
- (iv) The single audit must include the following components:
 - a. Balance Sheet or Statement of Financial Position;
 - b. Statement of Support, Revenue and Expenses and Changes in Fund Balances or Statement Activities;
 - c. Statement of Functional Expenses;
 - d. Schedule of Expenditures of Federal Awards;
 - e. Independent Auditor's Report on the Financial Statement and Schedule of Expenditures of Federal Awards;
 - f. Auditor's Report on Internal Control over Financial Reporting and on Compliance and Other Matters;
 - g. Auditor's Report on Compliance with Requirements Applicable to Major Programs and on Internal Control over Compliance;
 - h. Schedule of Findings and Questioned Costs;
 - i. Summary of Schedule of Prior Audit Findings;
 - j. Corrective Action Plan;
 - k. Data Collection Form.
- (f) 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 requirements of this AGREEMENT.

GRANTEE's independent public accountant 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.

- (g) Should GRANTEE not enter into an 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.

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

- b. 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.
- c. 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. Director shall make the final determination of disallowed costs, subject to provisions of 2 CFR 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).

SECTION 2. OTHER REQUIREMENTS OF GRANTEE

- 2.01 Contracting and Assignability Requirements. The rights and duties under this AGREEMENT shall not be delegated, assigned, or subcontracted by GRANTEE unless otherwise permitted by CITY in writing.
- 2.02 Independent Contractor.
 - 1. Relationship. It is understood and agreed by and between the Parties hereto that GRANTEE, in the performance of this AGREEMENT, shall act as and be an independent contractor and not an agent or employee of CITY, and that as an independent contractor, GRANTEE shall obtain no rights to retirement benefits or other benefits which accrue to CITY employees, and GRANTEE expressly waives any claims it may have to such rights.
 - 2. Certain Policy Matters. It is understood and agreed by and between the Parties hereto 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 involving or affecting local, state or federal policy. GRANTEE agrees that it will not in any matter 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 in such matters.

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

2.03 Compliance With Laws.

1. GRANTEE shall become familiar and comply with and cause all its subcontractors and employees, if any, to become familiar and comply with all applicable federal, state and local laws, ordinances, codes, regulations and decrees, policies, guidelines, and requirements. Failure of GRANTEE to in any manner observe and adhere to law, as described herein or as amended, shall in no way relieve GRANTEE of its responsibility to adhere to same and GRANTEE herein acknowledges this responsibility.
2. All activities of GRANTEE under this AGREEMENT shall benefit low and moderate income persons. Low and moderate income shall be defined as income at or below one hundred twenty percent (120%) of median income for the City of San José as determined by the Secretary of U.S. Department of Housing and Urban Development ("HUD"), as codified in California Health & Safety Code §33334. GRANTEE shall be responsible for verifying, in a manner satisfactory to CITY, that the use of the funds, meet the requirements of this AGREEMENT.
3. GRANTEE represents and warrants that it currently possesses all requisite licenses, including, but not limited to a City of San José business tax certificate or exemption, if qualified, with the CITY's Finance Department to operate in the CITY and will maintain all such licenses or exemptions for the term of this AGREEMENT. GRANTEE is responsible for contacting the appropriate offices and filing the necessary documents to comply with these requirements.
4. Grant funds may be used for the provision of public services under the following conditions:
 - (a) The public services provided are exclusively non-religious in nature and scope;
 - (b) There are no religious services, proselytizing, instruction, or any other religious influences in connection with the public services;
 - (c) There is no religious discrimination in terms of employment or benefits under the public services; and
 - (d) The grant funds may be used only for the provision of public services and not for the construction, rehabilitation or restoration of any facility owned by the religious organization where the services are to be provided. A narrow exception to this prohibition is that minor repairs may be made where such repairs (a) are directly related to the public services, (b) are located in a

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

structure used exclusively for non-religious purposes, and (c) constitute in dollar terms a minor portion of the grant expenditure for the public services.

- 2.04 Procedures for Corrective Action. Within ten (10) days of the receipt by CITY of a report filed by GRANTEE with CITY or of any substantiated report from any source, that evidences a failure by GRANTEE to comply with any provision of this AGREEMENT, CITY shall have the right to forward to GRANTEE a notice of CITY's intention to consider corrective action to enforce compliance with such provision. Such notice shall indicate the nature of the issue or issues which are to be reviewed in determining the need for corrective action, and the procedure whereby GRANTEE shall have the opportunity to participate in formulating the corrective action recommendation. CITY shall have the right to require the presence of any of GRANTEE's officers at any hearing or meeting called for the purpose of considering corrective action. Within ten (10) days of issuing such notice, and only after affording GRANTEE the opportunity to participate fully in corrective action deliberations, CITY shall forward to GRANTEE a set of specific corrective action recommendations and a detailed timetable for implementing the specified corrective action recommendations; such timetable shall allow GRANTEE not less than five (5) nor more than thirty (30) days to comply with the specified corrective action recommendations. Following implementation of the corrective actions, GRANTEE shall forward to CITY, within the time specified by CITY, any documentary evidence required by CITY to verify that the corrective actions have been taken.
- 2.05 Homeless Documentation of Short-Term Emergency Shelter Services and Persons living on the street. Projects may provide short-term shelter and/or services, such as outreach, food, health care, and clothing, to persons who reside on the streets or who are otherwise homeless. In these cases, it is not feasible to require documentation for each person obtaining such services offered by the Project. It is sufficient for the GRANTEE staff to confirm that the persons served, indeed, reside on the street or are otherwise homeless.
- 2.06 Disclosure. GRANTEE understands that participant information collected under this AGREEMENT is private and the use or disclosure of such information, when not directly connected with the administration of the CITY or GRANTEE's responsibilities with respect to services provided under this AGREEMENT, is prohibited unless written consent is obtained from such person receiving service.
- 2.07 Language Access Plan (LAP). GRANTEE shall fully implement and comply with the Language Access Plan as approved by CITY to ensure that Limited English Proficient participants have equal access to community programs and services.

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

ESG CARES ACT Conditions

SECTION 1. GENERAL GRANT CONDITIONS.

1.01 Definitions.

As used herein, "HUD" means the United States Department of Housing and Urban Development.

"Project Area" for the purposes of this **EXHIBIT E** means the City of San José.

1.02 These general grant conditions shall apply to the Emergency Solutions Grants Program: Stewart B. McKinney Homeless Assistance Act, as more specifically set forth in 24 CFR Part 91 and 576 (the "ESG Program").

1.03 **Applicable Federal Civil Rights Laws and Executive Orders.** In providing the services and work set forth in this Agreement, GRANTEE will carry out its work in a manner which will permit full compliance by CITY with the following, and GRANTEE shall strictly adhere to the following:

- a. Title VI of the Civil Rights Act of 1964, which provides that no person in the United States shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance;
- b. The Housing and Community Development Acts of 1974 and 1977, as amended, which provide that no person in the United States shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available pursuant to said acts;
- c. Title VIII of the Civil Rights Act of 1968 (The Fair Housing Act) which prohibits discrimination in the sale, rental, and financing of housing and the provision of brokerage services because of race, color, religion, sex, sexual orientation, actual or perceived gender identity, national origin, handicap, or familial status; and
- d. Executive Executive Order 11063, as amended by Executive Order 12259, which provides for equal opportunity in housing and related facilities provided by federal financial assistance. This order and its implementing regulations require the De necessary to prevent discrimination because of race, color, religion, sex, or national origin in the use, occupancy, sale, leasing, rental or other disposition of

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

residential property assisted with Federal loans, advances, grants or contributions; and Department of Housing and Urban Development to take all actions; and

- e. Executive Order 11246, (as amended by Executive Orders 11375 and 12086 and further amendments) Equal Opportunity Under HUD Contracts and HUD-assisted Construction Contracts, which requires that GRANTEE's and subrecipients, and their subcontractor, agree not to discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, sexual orientation, actual or perceived gender identity, or national origin; and
- f. Section 3 of the Housing and Urban Development Act of 1968, Pertaining to Employment Opportunities for Lower-Income Persons (12 U.S.C. 1701u) requires that, to the greatest extent feasible on projects financed by HUD, a subrecipient must:
 - 1. Provide opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project, are given to persons with household income that is at or below 80% of the median income for San José as defined by the Secretary of HUD. Where feasible, priority should be given to residents within the service area of the Project or the neighborhood in which the Project is located who have household income that is at or below 80% of the median income for San José as defined by HUD, and to participants in other HUD programs who have household income that is at or below 80% of the median income for the San José area; and
 - 2. Award contracts for work undertaken in connection with housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for persons residing within the metropolitan area in which the ESG-funded Project is located and have household income that is at or below 80% of the median income for San José as defined by the Secretary of HUD. Where feasible, priority should be given to business concerns that provide economic opportunities to residents within the service area or the neighborhood in which the Project is located who have household income that is at or below 80% of the median income for San José as defined by the Secretary of HUD, and to participants in other HUD programs who have household income that is at or below 80% of the median income for that area; and
 - 3. Self-certify whether they are a Section 3 business, employs Section 3 residents, or subcontracts with business that provide opportunities to low-income persons when an award of Two Hundred Thousand Dollars

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

- (\$200,000) or more of HUD funding is provided for housing rehabilitation, housing construction, or other public construction projects, and/or One Hundred Thousand Dollars (\$100,000) or more to subcontractors; and
4. At a minimum, provide documentation on federal compliance, reporting and outreach efforts; and
 - g. Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and implementing regulations when published which specify that no otherwise qualified individual shall, solely by reason of his or her handicap, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving Federal assistance; and
 - h. The Age Discrimination Act of 1975 (Pub. L. 94-135), as amended, and implementing regulations when published for effect which provides that no person shall be excluded from participation, denied program benefits, or subjected to discrimination on the basis of age under any program or activity receiving Federal assistance; and
 - i. The requirements relating to Minority-Owned and Women-Owned Business Enterprises set forth in Executive Order No. 11625 of October 13, 1971, 36 Fed. Reg. 19967, as amended by Executive Order No. 12007 of August 22, 1977, 42 Fed. Reg. 42839; and Executive Order No. 12432 of July 14, 1983, 48 Fed. Reg., 32551; and Executive Order No. 12138 of May 18, 1979, 44 Fed. Reg. 29637, a subrecipient must exercise affirmative outreach efforts when soliciting bids for service or construction when the Federal funds received by the subrecipient or subcontractor exceeds Ten Thousand Dollars (\$10,000) and when the subrecipient or subcontractor is a for-profit organization/business; and
1. GRANTEE will require to follow the guidelines for “Outreach” when soliciting bids for services and constructions exceeding TEN THOUSAND DOLLARS (\$10,000). GRANTEE will use the outreach provisions described under “Outreach Criteria” (see **Exhibit H**);
 2. When GRANTEE solicits bids from subcontractors, they shall include in all notices in local newspapers that “Women and Minority Owned Businesses are strongly encouraged to apply.” Developers/contractors/subrecipients, when feasible, are strongly encouraged to consider posting in Spanish and Vietnamese newspapers;

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

3. GRANTEE will report these efforts annually to the CITY.
- j. The Uniform Federal Accessibility Standards set forth in 24 CFR, Part 40, Appendix A; and
 - k. Americans with Disabilities Act of 1990 (ADA), which prohibits discrimination on the basis of disability in employment and in public accommodations and commercial facilities and defines the range of conditions that qualify as disabilities, and the reasonable accommodations that must be made to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for persons with disabilities. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993, that are readily accessible to and usable by individuals with disabilities. Further the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities where such removal is readily achievable – that is easily accomplishable and able to be carried out without much difficulty or expense; and
 - l. The provisions of 24 CFR Part 24, relating to the employment, engagement of services, awarding of contracts, or funding of any grantee or sub during any period of debarment, suspension or placement in ineligibility status; and
 - m. Section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et. seq.). This law provides that any grant under section 106 shall be made only if the GRANTEE certifies to the satisfaction of the Secretary of HUD that the GRANTEE will, among other things, affirmatively further fair housing; and
 - n. Section 109 of Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et. seq., particularly 42 U.S.C. 6101 ets. seq., and 29 U.S.C. 794) and further amendments, which mandates that no person on the grounds of race, color, national origin, sex, sexual orientation, actual or perceived gender identity, age or religion shall be excluded from participation, denied the benefits of, or otherwise be subject to discrimination under any activity funded in whole or part with esg funds; and
 - o. Architectural Barriers Act of 1968 requires that federally funded buildings and other facilities, as defined in 24 CFR 40.2 and 40 CFR 101-19.602(2), to be designed, constructed, or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people.

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

1.04 Political Reform Act. GRANTEE shall comply with the applicable provisions of the Political Reform Act of 1974, as amended, relating to conflicts of interest (codified at California Government Code Section 87000, et seq.) GRANTEE will 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.

1.05 Compliance with Federal Regulations.

- a. The work to be performed under this Agreement is on a Project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, (12 U.S.C. 1701u). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the Project Area and contracts for work in connection with the Project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the Project Area.
- b. The parties to this Agreement will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of HUD set forth in 24 Code of Federal Regulations, Part 135 and all applicable rules and orders of HUD issued thereunder prior to the execution of this Agreement.

The parties to this Agreement certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

- c. GRANTEE will send to each labor organization or representative of workers with which GRANTEE has a collective bargaining Agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of GRANTEE's commitments under this Section 3 clause and shall post copies of this notice in conspicuous places available to employees and applicants for employment or training.
- d. GRANTEE shall include this Section 3 clause in every subcontract for work in connection with the Project and will, at the direction of the applicant for or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of HUD (24 CFR 135). GRANTEE will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

- e. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders of HUD issued thereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the Project, binding upon the applicant or recipient for such assistance, its successors, and assigns.

Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan Agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR 135.

1.06 Flood Disaster Protection. Notwithstanding any other provision of this Agreement, GRANTEE shall comply with the Flood Disaster Protection Act of 1973, as amended (P.L. 93-234), and the standards issued thereto. No portion of the moneys to be paid to GRANTEE pursuant to this Agreement shall be used for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in an area not in compliance with the requirements for participation in the National Flood Insurance Program pursuant to Section 201(d) of said Act; and the use of any of said moneys for such acquisition or construction in such identified areas in communities then participating in the National Flood Insurance Program shall be subject to the mandatory purchase of flood insurance requirements of Section 102(a) of said Act.

Any contract or agreement for the sale, lease or other transfer of land acquired, cleared or improved with assistance provided under this Agreement shall contain, if such land is located in an area identified by the Secretary of HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001, et seq., provisions obligating the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(a) of the Flood Disaster Protection Act of 1973, as amended. Such provisions shall be required notwithstanding the fact that the construction on such land is not itself funded with assistance provided under this Agreement.

1.07 Equal Employment Opportunity. In providing the work and services herein specified, GRANTEE shall not discriminate against any employee or applicant for employment because of race, sex, color, age, religion, sexual orientation, actual or

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

perceived gender identity, disability, ethnicity, or national origin. GRANTEE shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, sex, color, age, religion, sexual orientation, disability, ethnicity, 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. GRANTEE shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or the CITY setting forth the provisions of this nondiscrimination clause. GRANTEE shall state that all qualified applicants will receive consideration for employment without regard to race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin. GRANTEE shall incorporate the foregoing requirements of this paragraph 1.08 in all of its contracts for program work, and will require all of its contractors for such work to incorporate such requirements in all subcontracts for program work.

1.08 Prohibition of and Elimination of Lead-Based Paint Hazard. Notwithstanding any other provision, GRANTEE agrees to comply with the regulations issued by the Secretary of HUD set forth in 24 CFR 135, 24 CFR 576.403, and all applicable rules and orders issued thereunder which prohibit the use of lead-based paint in residential structures undergoing federally assisted construction or rehabilitation and require the elimination of lead-based paint hazards. Every contract or subcontract, including painting, pursuant to which such federally assisted construction or rehabilitation is performed, shall include appropriate provisions prohibiting the use of lead-based paint.

1.09 Compliance With Clean Air and Water Acts. This Agreement is subject to 42 U.S.C. 7401, *et seq.*, and 33 U.S.C. 1251 *et seq.*, and the regulations issued pursuant thereto. Therefore, GRANTEE agrees as follows:

- a. GRANTEE stipulates that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20.
- b. GRANTEE agrees to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. 7414) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in said Sections 114 and 308, and all regulations and guidelines issued thereunder.
- c. GRANTEE stipulates that as a condition for the award of the contract prompt notice will be given of any notification received from the Director, Office of Federal

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

Activities, EPA, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

- d. GRANTEE agrees that criteria and requirements in subparagraphs (a) through (d) of this section 1.10 will be included in every non-exempt subcontract and GRANTEE shall take such action as the CITY or HUD requires as a means of enforcing such provisions.

In no event shall any amount of the assistance provided under this Agreement be utilized with respect to a facility which has given rise to a conviction under Section 113(c)(1) of the Clean Air Act or Section 309(c) of the Federal Water Pollution Control Act.

1.10 Nondiscrimination Under Title VI of the Civil Rights Act of 1964. GRANTEE under this Agreement shall be subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and HUD regulations with respect thereto including the regulations under 24 CFR Part 1. In the sale, lease or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, GRANTEE shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination upon the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity, or national origin, in the sale, lease or rental, or in the use of occupancy of such land or any improvements erected or to be erected thereon, and providing that GRANTEE and the United States are beneficiaries of and entitled to enforce such covenant. GRANTEE, in providing the services and work it is to provide, pursuant to this Agreement, agrees to take such measures as are necessary to enforce such covenant and will not itself so discriminate.

1.11 Interest of Certain Federal Officials. Under 18 U.S.C. § 203, no member of or Delegate to the Congress of the United States, and no Resident Commissioner, shall be admitted to any share or part of this Agreement or to any benefit arising from same.

1.12 Conflict of Interest. No officer, employee or agent of CITY or GRANTEE who exercises any functions or responsibilities with respect to the ESG Program or to the services and work to be performed by GRANTEE pursuant to this Agreement, during such officer's, employee's or agent's tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

GRANTEE shall incorporate or cause to be incorporated in every contract required to be in writing a provision prohibiting such interest pursuant to the purposes of this section.

1.13 Prohibition Against Payments of Bonuses or Commissions. The assistance provided under this Agreement shall not be used in the payment of any bonus or commission for the purposes of obtaining HUD approval of the application for such

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

assistance, or HUD approval of applications for additional assistance, or any other approval or concurrence of HUD required under this Agreement, Title I of the Housing and Community Development Acts of 1974 or 1977, or HUD regulations with respect thereto; provided, however, that reasonable fees or bona fide technical, consultant, managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as program costs.

1.14 Copyrights. If this Agreement results in a book or other copyrightable material, the author is free to copyright the work, but HUD reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, all copyrighted material and all material which can be copyrighted.

1.15 Patents. Any discovery or invention arising out of or developed in the course of work aided by this Agreement shall be promptly and fully reported to CITY and HUD for determination by HUD as to whether patent protection on such invention or discovery shall be sought and how the rights in the invention or discovery, including the rights under any patent issued thereon, shall be disposed of and administered, in order to protect the public interest.

1.16 Political Activity.

- a. Partisan Activity Prohibited. No funds provided in this Agreement shall be used for any partisan political activity or to further the election or defeat of any candidate for public office; nor shall they be used to provide services, or for the employment or assignment of personnel in a manner supporting or resulting in the identification of programs conducted pursuant to this Agreement with the following: (1) any partisan or nonpartisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office; (2) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election; or (3) any voter registration activity.
- b. Lobbying Prohibited. None of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before the Congress.

1.17 Guidelines On Church-Related Activities. GRANTEE shall adhere to the limitations on the use of assistance provisions contained in 24 CFR 576.406 of the Regulations. Grant funds may be used for the provision of public services under the following conditions:

- a. The public services provided are exclusively non-religious in nature and scope;

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

- b. There are no religious services, proselytizing, instruction, or any other religious influences in connection with the public services;
- c. There is no religious discrimination in terms of employment or benefits under the public services; and
- d. The grant funds may be used only for the provision of public services and not for the construction, rehabilitation or restoration of any facility owned by the religious organization where the services are to be provided. A narrow exception to this prohibition is that minor repairs may be made where such repairs (a) are directly related to the public services, (b) are located in a structure used exclusively for non-religious purposes, and (c) constitute in dollar terms a minor portion of the grant expenditure for the public services.

1.18 Compliance with Applicable Federal Law. In providing the services and work set forth in this Agreement, GRANTEE will carry out its work in a manner which will permit full compliance by CITY with the following, and GRANTEE shall strictly adhere to the following:

- a. Section 504 of the Rehabilitation Act of 1973 (Pub.L. 93-112) as amended, and implementing regulations when published for effect;
- b. The Age Discrimination Act of 1975, as amended, (Pub.L. 94-135) and implementing regulations when published for effect;
- c. The relocation requirements of Title II and the acquisition requirements of Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the implementing regulations at 24 CFR Part 42.
- d. The requirements relating to minority and women's business enterprises set forth in Executive Order No. 11625 of October 13, 1971, 36 Fed. Reg. 19967, as amended by Executive Order No. 12007 of August 22, 1977, 42 Fed. Reg. 42839; and Executive Order No. 12432 of July 14, 1983, 48 Fed. Reg. 32551; and Executive Order No. 12138 of May 18, 1979, 44 Fed. Reg. 29637;
- e. The Uniform Federal Accessibility Standards set forth in 24 CFR, Part 40, Appendix A;
- f. The provisions of 24 CFR, Part 24, relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension or placement in ineligibility status;

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

GRANTEE shall comply with all requirements imposed by or pursuant to said federal laws including any applicable amendments thereto. In such regard, GRANTEE is responsible for becoming familiar with said federal law. Failure on the part of GRANTEE to in any manner adhere to said federal laws shall in no way relieve GRANTEE of his or her responsibility to adhere to same, and GRANTEE herein acknowledges his or her responsibility.

1.19 GRANTEE shall comply with non-discrimination provisions of the Federal Fair Housing Act: (1) Services or benefits will not be provided only to specific or limited ethnic or racial groups; (2) GRANTEE attends training on how to identify groups at least likely to benefit from services or program; (3) GRANTEE identifies effective means for conducting outreach and marketing to attract these groups; (4) CITY shall monitor sub-recipients and their programs to ensure that racial and ethnic data is being accurately collected and provide technical assistance as needed.

1.20 Applicability of 2 CFR Part 200. GRANTEE gives assurance and certifies with respect to the Program that use of Emergency Solutions Grant amounts comply with the policies, guidelines, and requirements of 2 CFR Part 200, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, as they relate to the acceptance and use of Emergency Solutions Grant amounts by states, units or general local government, and private non-profit organizations.

1.21 Uniform Federal Accessibility Standards. GRANTEE gives assurance and certifies with respect to the Program that use of Emergency Solutions Grant amounts comply with the Uniform Federal Accessibility Standards at 24 CFR Part 40, Appendix A, as they relate to major rehabilitation or conversion.

1.22 Establishment and Maintenance of Records. GRANTEE gives assurance and certifies with respect to the Program that client eligibility data shall include, but not be limited to, client name, address, income level, race/ethnicity, head of household gender, client's family size, total household income, race, and ethnic data as described on HUD Form 27061 (9/2003), disability data (as applicable), and client signature and certification that the intake information is accurate and subject to verification.

1.23 HMIS Participation. All agencies providing homeless services in receipt of funding from the CITY's Emergency Solutions Grant program are required to fully participate in the Homeless Management Information System ("HMIS") and work closely with the

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

County of Santa Clara Office of Supportive Housing (“CSC OSH”), to ensure the agency has the mechanisms and staffing in place to use the system appropriately and in a timely manner. Funded agencies are required to collect demographic information on all clients served by the funded projects, the services provided, and consent to release the information to CSC OSH and the CITY’s Housing Department.

Funded projects must utilize all appropriate aspects of HMIS in order to generate the statistical information required for reporting to the CITY on all universal and program level elements of the HUD Data Standards. These statistical reports must be generated directly out of HMIS. No adjustments to the HMIS reports will be accepted and it is therefore incumbent on the agency to ensure that the information they put into HMIS is accurate and up to date. CITY will measure performance and outcomes relating to these funded projects through the use of the HMIS statistical data, based on the HUD data elements, or other reporting requirements as determined by the CITY. The CITY will request from the HMIS Administrator, acknowledgement of the recipient agencies’ certificate of compliance with HUD privacy and security standards, acknowledgement of use of the Shelter Point program, and statistics on the percentage of Universal and Top Level Program data captured.

1.24 GRANTEE’S operating emergency shelter facilities shall follow the most recently approved Santa Clara Countywide Quality Assurance Standards for Homeless Housing and Service Programs.

1.25 Environmental Requirements. (24 CFR 576.407) GRANTEE is not allowed to incur program expenses until the CITY has performed an environmental review of the proposed activities, received the release of funds, and provided the GRANTEE with formal clearance to initiate them, along with directives for any action necessary to mitigate negative environmental impacts (24 CFR Part 58).

1.26 Historic Preservation. GRANTEE shall not violate provisions of the Historic Preservation Act and related laws and Executive Orders. Before any commitments are made to make any physical improvements or alterations or demolition of any building, GRANTEE shall receive assurances from the CITY that the GRANTEE is in compliance.

1.27 If GRANTEE receives State of California (“State”) or CITY funds, GRANTEE shall, in the use of those State or CITY funds adhere to the applicable Federal laws, regulations, policies, guidelines or requirements, herein specified, only insofar as adherence thereto would not be prohibited by valid CITY or State laws, regulations, policies, guidelines or requirements.

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

1.28 Applicability of OMB Circulars. GRANTEE gives assurance and certifies with respect to the Program that use of Emergency Solutions Grant amounts comply with the policies, guidelines, and requirements of OMB Circular A-87 and A-102, as they relate to the acceptance and use of Emergency Solutions Grant amounts by states and units of general local government, and OMB Circular A-110 and A-122, as they relate to the acceptance and use of emergency shelter amounts by private non-profit organizations.

SECTION 2. FINANCIAL OBLIGATIONS OF GRANTEE

GRANTEE agrees to the following:

2.01 Fiscal Responsibilities of GRANTEE.

GRANTEE shall:

- a. Appoint and submit to CITY, the name of a fiscal agent who shall be 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 that shall be in conformance with generally accepted principles of accounting for budgeted funds. Such system of accounts shall be subject to review and approval of CITY.
- c. Document all costs by maintaining complete and accurate records of all financial transactions, including but not limited to contracts, invoices, time cards, cash receipts, vouchers, cancelled 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 fifteen (15) working days of the end of the preceding month, requests for reimbursement, together with documentation required by CITY.
- e. Certify insurability subject to CITY approval as outlined in **EXHIBIT G** entitled "INSURANCE."
- f. Submit to HUD or CITY at such times and in such forms as HUD or CITY may require, such statements, records, reports, data, and information pertaining to matters covered by this Agreement.
- g. Comply with 2 CFR Part 200 and adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

- h. Administer all programs in conformance with 2 CFR Part 200, Subpart E, "Cost Principles." These principles shall be applied for all costs incurred whether charged in a direct or indirect basis.
- i. 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.

2.02 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 the CITY.
- b. Preservation of Records. GRANTEE shall preserve and make available its records:
 - 1. for the period of four (4) years from the date of final payment to GRANTEE under this Agreement; or
 - 2. for such longer period, if any, as may be required by applicable law; or
 - 3. 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, GRANTEE agrees that HUD and/or CITY, and/or any of their respective authorized representatives shall:
 - 1. for a period of four (4) years after final payment under this Agreement; or,
 - 2. for such longer period as may be required by applicable law; or

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

3. if this Agreement is completely or partially terminated, for a period of four (4) years from date of any resulting settlement;
- 4.

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 HUD and/or CITY, or any of their 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. Audits:

1. Independent Audits.

- (a) Funds will be set aside in each agency's budget just for an independent audit. A separate line item will be established.
- (b) GRANTEE shall enter into an agreement with an independent public accountant certified to practice in the State of California no later than sixty (60) days before the end of this Agreement calling for an audit to be done for the entire year. The audit must be in conformance with the applicable funding source.
- (c) The audit must be completed and sent to CITY's Department of Housing staff within the later of one hundred fifty (150) days of the end of this Agreement or ninety (90) days after the end of GRANTEE's fiscal year.
- (d) Independent Audits. The independent fiscal audit shall conform to generally accepted governmental auditing principles and 2 CFR Part 200, Subpart F, "Audit Requirements." Such audits shall identify the funds received and disbursed under this Agreement.
- (e) For grantees that expend \$750,000 or more of Federal financial assistance in a fiscal year, in addition to conducting normal financial audit procedures, the GRANTEE's independent public accountant

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

certified to practice in the State of California shall perform tests to ascertain that:

- (i) Expenditures submitted for reimbursement are allowable under 2 CFR 200;
- (ii) Expenditures are in compliance with the grant agreements between the CITY and GRANTEE; and
- (iii) Applicable laws and regulations. Further, the independent public accountant certified to practice in the State of California shall render an opinion as to whether the Expenditures complied with the Single Audit Act of 1984 and 2 CFR Part 200, Subpart F, "Audits Requirements".
- (iv) Funds may be set aside in GRANTEE's budget in an amount equal to CITY's fair share of GRANTEE's cost of an independent audit in compliance with 2 CFR Part 200, if required, with prior approval from the agency. The audit must include the following components:
 - a. Balance Sheet or Statement of Financial Position;
 - b. Statement of Support, Revenue and Expenses and Changes in Fund Balances or Statement Activities;
 - c. Statement of Functional Expenses;
 - d. Schedule of Expenditures of Federal Awards;
 - e. Independent Auditor's Report on the Financial Statement and Schedule of Expenditures of Federal Awards;
 - f. Auditor's Report on Internal Control over Financial Reporting and on Compliance and Other Matters;
 - g. Auditor's Report on Compliance with Requirements Applicable to Major Programs and on Internal Control over Compliance;
 - h. Schedule of Findings and Questioned Costs;
 - i. Summary of Schedule of Prior Audit Findings;
 - j. Corrective Action Plan;
 - k. Data Collection Form;
 - l. Communication of Internal Control Related Matters Identified in an Audit (Management Letter) from Auditor (if one was issued)
 - 1. GRANTEE shall also submit to the agency a written management response to the findings of the Internal Control Matters.
- (v) GRANTEES that are not required under the Single Audit Act to submit reports in conformance with the requirements of 2 CFR Part 200, Subpart F, "Audit Requirements," shall submit an

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

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:

- a. Balance Sheet or Statement of Financial Position;
 - b. Statement of Support, Revenue, and Expenses and Changes in Fund Balances or Statement Activities;
 - c. Statement of Functional Expenses;
 - d. Statement of Auditor's Report;
 - e. Communication of Internal Control Related Matters Identified in an Audit (Management Letter) from Auditor
 1. GRANTEE shall also submit to the agency a written management response to the findings of the Internal Control Matters.
- (f) For GRANTEES that expend more than \$750,000 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 disbursed under each grant during the audited fiscal year, including the amount received and disbursed under this Agreement.
- (g) 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 requirements of this Agreement.
- (h) Should GRANTEE not enter into an 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.

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

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

may be bound into a single report, or presented at the same time as separate documents.

2. 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.
3. Disallowed Costs. GRANTEE is liable for repayment of disallowed costs as determined by CITY, in its sole discretion, and/or HUD. 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. DIRECTOR shall make the final determination of disallowed costs, subject to provisions of 2 CFR Part 200, Subpart E, "Cost Principles" and applicable HUD regulations.

SECTION 3. OTHER REQUIREMENTS OF GRANTEE

3.01 Contracting and Assignability Requirements. Rights and duties under this Agreement shall not be delegated or assigned by GRANTEE nor shall any of the work or services to be performed hereunder be subcontracted to third parties except to the extent and in the manner hereinafter provided in the McKinney Emergency Solutions Grant Program Regulations (the "Regulations") referred to in Section 12.

3.02 Independent Contractor.

- a. Relationship. It is understood and agreed by and between the parties hereto that GRANTEE, in the performance of this Agreement, shall act as and be an independent contractor and not an agent or employee of CITY, and that as an independent contractor, GRANTEE shall obtain no rights to retirement benefits or other benefits which accrue to CITY employees, and GRANTEE expressly waives any claims it may have to such rights.
- b. Certain Policy Matters. It is understood and agreed by and between the parties hereto 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 involving or affecting local, state or federal policy. GRANTEE agrees that it will not in any matter 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 in such matters.

3.03 Compliance With Laws.

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

- a. GRANTEE shall become familiar with and comply and cause all its subcontractors and employees, if any, to become familiar and comply with all applicable federal, state and local laws, ordinances, codes, regulations and decrees, operational standards, policies, and guidelines, including, but not limited to, those federal rules and regulations detailed in this **EXHIBIT E**. Failure of GRANTEE to in any manner observe and adhere to law, as described herein or as amended, shall in no way relieve GRANTEE of its responsibility to adhere to same and GRANTEE herein acknowledges this responsibility.
- b. All activities of GRANTEE under this Agreement shall either principally benefit low income persons, aid in the prevention of slums and blight, or meet other community development needs having a particular urgency. GRANTEE shall be responsible for verifying, in a manner satisfactory to CITY, that Project and activities meet the above requirements.
- c. GRANTEE represents and warrants that it currently possesses all requisite licenses, including, but not limited to a City of San José business tax certificate or exemption, if qualified, with the CITY's Finance Department to operate in the CITY and will maintain all such licenses or exemptions for the term of this Agreement. GRANTEE is responsible for contacting the appropriate offices and filing the necessary documents to comply with these requirements.

3.04 Procedures for Corrective Action. Within ten (10) days of the receipt by CITY of a report filed by GRANTEE with CITY or of any substantiated report from any source, that evidences a failure by GRANTEE to comply with any provision of this Agreement, CITY shall have the right to forward to GRANTEE a notice of CITY's intention to consider corrective action to enforce compliance with such provision. Such notice shall indicate the nature of the issue or issues which are to be reviewed in determining the need for corrective action, and the procedure whereby GRANTEE shall have the opportunity to participate in formulating the corrective action recommendation. CITY shall have the right to require the presence of any of GRANTEE's officers at any hearing or meeting called for the purpose of considering corrective action. Within ten (10) days of issuing such notice, and only after affording GRANTEE the opportunity to participate fully in corrective action deliberations, CITY shall forward to GRANTEE a set of specific corrective action recommendations and a detailed timetable for implementing the specified corrective action recommendations; such timetable shall allow GRANTEE not less than five (5) nor more than thirty (30) days to comply with the specified corrective action recommendations. Following implementation of the corrective actions, GRANTEE shall forward to CITY, within the time specified by CITY, any documentary evidence required by CITY to verify that the corrective actions have been taken.

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

3.05 Disclosure. GRANTEE understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the CITY or GRANTEE's responsibilities with respect to services provided under this Agreement, is prohibited unless written consent is obtained from such person receiving service, or, in the case of a minor, that of a responsible parent/guardian.

3.06 Program Income. GRANTEE shall report all program income (as defined at 24 CFR 576.2 and 2 CFR 200.80) generated by activities carried out with ESG funds made available under this Agreement. The use of program income by the GRANTEE shall comply with the requirements set forth at 24 CFR 576. By way of further limitations, the GRANTEE may use such income during the contract period for activities permitted under this Agreement and shall reduce requests for additional funds by the amount of any such program income balances on hand. All unexpended program income shall be returned to the CITY at the end of the contract period. Any interest earned on cash advances from the U.S. Treasury and from funds held in a revolving fund account is not program income and shall be remitted promptly to the CITY.

3.07 Indirect Costs. If indirect costs are charged, GRANTEE will develop an indirect cost allocation plan for determining the appropriate share of administrative costs and shall submit such plan to the CITY for approval, in a form specified by the CITY.

3.08 Hatch Act. GRANTEE agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

SECTION 4. OPERATING REQUIREMENTS

4.01 Emergency Housing Shelters operating within the CITY OF SAN JOSE must follow these criteria:

- a. Shelter services must be provided with dignity ,care, and concern for the individuals involved.
- b. The Shelter should be operated by a non-profit corporation with a bona fide professional staff and an independent Board of Directors.
- c. The buildings used to shelter the homeless should comply with City, County, and State Building, Fire, and Health Codes, and must be maintained in a safe and sanitary condition at all times, unless appropriate exemptions have been obtained from the appropriate agencies.

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

- d. In all Shelters there should be adequate separation of families and singles, and adequate separation of single women.
- e. It is preferable that Shelter space be made available to individuals and families by a phone reservation process. However, when this is impossible because of special circumstances, the waiting lines should be made inconspicuous and should be on the property whenever possible.
- f. No drugs, no alcohol, no weapons will be allowed on Shelter property at any time. (if guests have a legal weapon, it should be checked in with the Shelter staff.)
- g. No disorderly conduct will be tolerated, e.g., loud radio, etc.
- h. Smoking will be restricted to designated areas.

SECTION 5: OTHER REQUIREMENTS OF GRANTEE

5.01 Relocation and Real Property Acquisition. GRANTEE shall comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) and 24 CFR 576.408; and (b) the requirements of 24 CFR 576.408 governing relocation assistance for displaced person. Under 24 CFR 576.408, the subrecipient must provide relocation assistance to displaced persons (families, individuals, businesses, non-profit organizations and farms) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for an ESG-assisted project. A displaced person (defined under 24 CFR 576.407(c)(2)) must be provided relocation assistance at the levels described in, and in accordance with, the URA and 49 CFR part 24. A displaced person must be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601 *et seq.*). Whenever possible, minority persons shall be given reasonable opportunities to relocate to comparable and suitable decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require providing a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling. (See 49 CFR 24.205(c)(2)(ii)(D).) As required by Section 504 of the Rehabilitation Act (29 U.S.C. 794) and 49 CFR part 24, replacement dwellings must also contain the accessibility features needed by displaced persons with disabilities..

5.02 Language Access Plan (LAP). GRANTEE shall fully implement and comply with the Language Access Plan ("LAP"), as mandated in FR-4878-N-02, and as approved by CITY to ensure that limited English proficient clients have equal access to community programs and services.

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

EXHIBIT F

**EMPLOYEE/VOLUNTEER CLEARANCE VERIFICATION AND COMPLIANCE WITH
CHILD ABUSE AND NEGLECT REPORTING ACT**

If GRANTEE provides services involving minors, and as a CITY-approved method of complying with the provisions contained in this AGREEMENT, GRANTEE shall conduct a criminal background check through the database of the California Department of Justice **and** an FBI criminal database or equivalent national database as approved in writing by GRANTEE's liability insurance provider, on each of its employees and volunteers who have supervisory or disciplinary authority over minors.

GRANTEE shall also comply with the provisions of the Child Abuse and Neglect Reporting Act, California Penal Code Section 11164 *et. seq.* Additionally, GRANTEE certifies to the following:

1. Any and all personnel employed or retained by GRANTEE in conducting the operations of GRANTEE's program shall be qualified to perform the duties assigned to them by GRANTEE. GRANTEE agrees that GRANTEE shall not at any time allow its employees or volunteers to be in any position with supervisory or disciplinary authority over minors, if they have been convicted of any offense identified in California Public Resources Code Section 5164 (copy attached).

CITY and GRANTEE understand that results of background checks on minors may be confidential under state law. Therefore, all employees or volunteers must be at least 18 years of age if they are to be in a position having supervisory or disciplinary authority over any minor.

If GRANTEE intends to have employees or volunteers under the age of 18 providing services under this AGREEMENT, GRANTEE shall maintain and make available to CITY, if requested, guidelines, procedures or policies, that safeguard and ensure that no employees or volunteers under the age of 18 will be providing services under this AGREEMENT unsupervised and further GRANTEE shall ensure that none of its employees or volunteers under 18 years of age have any supervisory or disciplinary authority over any minor, as such term is used in California Public Resources Code Section 5164.

2. GRANTEE shall be responsible for ensuring that no person who has supervisory or disciplinary authority over minors, who is paid or unpaid by GRANTEE shall be permitted to provide services unless appropriate background checks, including fingerprints, have been performed prior to the beginning of services under this AGREEMENT, and the person meets the standards set forth above. If requested by CITY, and to the extent allowed by law, GRANTEE shall promptly provide documentation listing each person that has provided or is providing services hereunder involving supervision or disciplinary authority over minors, and certifying

F-1

PATH – Emergency Interim Housing Program at Evans Lane
GF-19-013
T-39543/1733027

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

that the GRANTEE has conducted the proper background check on such person or persons, and each of the named persons is legally permitted to perform the services described in this AGREEMENT. Regardless of whether such documentation is requested or delivered by GRANTEE, GRANTEE shall be solely responsible for compliance with the provisions of this Section 2.

3. That no person paid or unpaid by GRANTEE shall be permitted to provide services requiring contact with children or providing food concessionaire services or other licensed concessionaire services in that area, unless GRANTEE has complied with the TB testing requirements set forth in Section 5163 of the California Public Resources Code (copy attached), verifying that the person or persons has provided evidence/verification of a negative TB skin test reading less than two (2) years old (if newly hired) or within four (4) years (if current employee) of the date of execution of this AGREEMENT and every four (4) years thereafter, if the term of this AGREEMENT exceeds four (4) years. For persons with a positive TB skin test reading, a physician's medical clearance must be obtained prior to services being provided as specified above. GRANTEE shall keep on file each certificate of clearance ("Certificate") for the persons described above, and shall also make available a copy of each Certificate to CITY, if requested and allowed by law. "Certificate" means a document signed by a licensed examining physician and surgeon or a notice from a public health agency or unit of the tuberculosis association which indicates freedom from active tuberculosis.
4. GRANTEE understands that if services are rendered on a school site, there may be additional requirements that may apply including without limitation, requirements under the California Education Code. GRANTEE acknowledges that it is GRANTEE's sole responsibility to comply with all applicable laws, regulations and licensing requirements in GRANTEE's provision of services hereunder.

I, the GRANTEE by signing below verify that I have read and agree to the above:



10/08/20

Signature

Date

PATH

Please Print or Type Name of Organization

F-2

PATH – Emergency Interim Housing Program at Evans Lane
GF-19-013
T-39543/1733027

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

CALIFORNIA PUBLIC RESOURCES CODE SECTION 5164

5164. (a)(1) A county or city or city and county or special district shall not hire a person for employment, or hire a volunteer to perform services, at a county or city or city and county or special district operated park, playground, recreational center, or beach used for recreational purposes, in a position having supervisory or disciplinary authority over any minor, if that person has been convicted of any offense specified in paragraph (2).

(2)(A) Violations or attempted violations of Section 220, 261.5, 262, 273a, 273d, or 273.5 of the Penal Code, or any sex offense listed in Section 290 of the Penal Code, except for the offense specified in subdivision (d) of Section 243.4 of the Penal Code.

(B) Any felony or misdemeanor conviction specified in subparagraph (C) within ten (10) years of the date of the employer's request.

(C) Any felony conviction that is over ten (10) years old, if the subject of the request was incarcerated within ten (10) years of the employer's request, for a violation or attempted violation of any of the offenses specified in Chapter 3 (commencing with Section 207) of Title 8 of Part 1 of the Penal Code, Section 211 or 215 of the Penal Code, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022 of the Penal Code, in the commission of that offense, Section 217.1 of the Penal Code, Section 236 of the Penal Code, any of the offenses specified in Chapter 9 (commencing with Section 240) of Title 8 of Part 1 of the Penal Code, or any of the offenses specified in subdivision (c) of Section 667.5 of the Penal Code, provided that no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three (3) or more misdemeanor convictions, or a combined total of three (3) or more misdemeanor and felony convictions, for violations listed in this Section within the ten-year period immediately preceding the employer's request or has been incarcerated for any of those convictions within the preceding ten (10) years.

(b)(1) To give effect to this Section, a county or city or city and county or special district shall require each such prospective employee or volunteer to complete an application that inquires as to whether or not that individual has been convicted of any offense specified in subdivision (a). The county or city or city and county or special district shall screen, pursuant to Section 11105.3 of the Penal Code, any such prospective employee or volunteer, having supervisory or disciplinary authority over any minor, for that person's criminal background.

(2) Any local agency requests for Department of Justice records pursuant to this subdivision shall include the prospective employee's or volunteer's fingerprints, which may be taken by the local agency, and any other data specified by the Department of Justice. The request shall be made on a form approved by the Department of Justice. No fee shall be charged to the local agency for requesting the records of a prospective volunteer pursuant to this subdivision.

(3) A county, city, city and county, or special district may charge a prospective employee or volunteer described in subdivision (a) a fee to cover all of the county, city, city and county, or special district's costs attributable to the requirements imposed by this section.

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

CALIFORNIA PUBLIC RESOURCES CODE SECTION 5163

5163. (a) No person shall initially be employed in connection with a park, playground, recreational center, or beach used for recreational purposes by a city or county in a position requiring contact with children, or as a food concessionaire or other licensed concessionaire in that area, unless the person produces or has on file with the city or county a certificate showing that within the last two (2) years the person has been examined and has been found to be free of communicable tuberculosis.

(b) Thereafter, those employees who are skin test negative shall be required to undergo the foregoing examination at least once each four (4) years for so long as the employee remains skin test negative. Once an employee has a documented positive skin test which has been followed by an X-ray, the foregoing examination is no longer required and a referral shall be made within thirty (30) days of the examination to the local health officer to determine the need for follow-up care.

“Certificate” means a document signed by the examining physician and surgeon who is licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, or a notice from a public health agency or unit of the tuberculosis association which indicates freedom from active tuberculosis.

5163.1. The examination shall consist of an approved intradermal tuberculosis test, which, if positive, shall be followed by an X-ray of the lungs.

Nothing in Sections 5163 to 5163.2, inclusive, shall prevent the governing body of any city or county, upon recommendation of the local health officer, from establishing a rule requiring a more extensive or more frequent examination than required by Section 5163 and this Section.

5163.2. The X-ray film may be taken by a competent and qualified X-ray technician if the X-ray film is subsequently interpreted by a licensed physician and surgeon.

5163.3. The city or county shall maintain a file containing an up-to-date certificate for each person covered by Section 5163.

5163.4. Nothing in Section 5163 to 5163.3, inclusive, shall prevent the city or county from requiring more extensive or more frequent examinations.

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

EXHIBIT G

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, including products and completed operations; 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 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor and Employers Liability limits of \$1,000,000 per accident; coverage shall be endorsed to state carrier waives its rights of subrogation against the CITY, its officers, employees, agents and contractors; 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, 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.

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

- 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 a waiver of subrogation in favor of the City of San José, its officers, employees, agents, and contractors.

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.

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 email or postal address as may be directed in writing by the Risk Manager:

City of San José – Finance
Risk Management
200 East Santa Clara St. 14th Floor Tower
San Jose, 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.

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

**EXHIBIT H
RETROACTIVE SERVICES**

It is understood and agreed that GRANTEE has provided services prior to the execution of this AGREEMENT in anticipation of its execution. If CITY accepts and approves the services provided by GRANTEE prior to the date of this AGREEMENT, CITY agrees to compensate GRANTEE for those services in accordance with the terms of this AGREEMENT. However, in no event shall GRANTEE be compensated for work performed for CITY prior to June 15, 2020.

H-1

PATH – Emergency Interim Housing Program at Evans Lane
GF-19-013
T 20542/1722027

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT

EXHIBIT I
FEDERAL FUND PROVISIONS/CORONAVIRUS RELIEF FUND RECIPIENT
CONDITIONS

Federal Fund Provisions

In addition to all the other terms and conditions of this Agreement, Contractor agrees to comply with the following federal fund provisions in performing the Agreement. If any of these federal fund provisions conflict with any other provisions of this Agreement, the federal fund provisions will take precedence unless the other provision is more restrictive, in which case the other provision will control.

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.

CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT

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

B. Copeland "Anti-Kickback"

1. **Contractor.** The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Agreement.
2. **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions

CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT

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 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.

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

4. **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

D. Federal Clean Air Act Requirements

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

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq.*
2. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the State of California, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

E. Federal Water Pollution Act Requirements

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

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

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

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

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

G. Suspension and Debarment

Contractor will comply with the following provision:

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

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



Signature of Contractor's Authorized Official

Deputy CEO & Executive Director

Name and Title of Contractor's Authorized Official

10/08/20

Date

CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT

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

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

I. Use of Recovered/Recycled Materials

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

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

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

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

J. Subcontracting

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

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 FEMA 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:

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

- Made reasonable efforts to identify (including using outside entities that specialize in this area) and place qualified small, minority, and women-owned business on subcontractor solicitation list(s) for this Agreement;
- Made reasonable efforts to solicit the businesses on the list as subcontractors for this Agreement;
- Divided the scope of work to be subcontracted, when economically feasible, into smaller tasks or quantities to permit maximum participation by qualified small, minority, and women-owned business; and
- Made reasonable efforts to establish delivery schedules for subcontracted work, where requirements permit and it is otherwise appropriate, which encourage qualified small, minority, and women-owned business to respond subcontractor solicitations; and

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

K. Notice of 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:

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

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

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

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

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

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

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

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

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

1. The Contractor agrees to provide the City, the State of California, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
2. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. The Contractor agrees to provide the FEMA Administrator or his/her authorized representatives access to construction or other work sites pertaining to the work being completed under the Agreement.
4. In compliance with the Disaster Recovery Act of 2018, the Contractor acknowledges and agrees that no language in this Agreement is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

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

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

The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than five (5) years after final payment is made using Coronavirus Relief Fund monies, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the City, State of California, the FEMA Administrator, the Comptroller General of the United States, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related to the litigation or settlement of claims.

Recipients of Coronavirus Relief Funds payments shall maintain and make available to the Treasury OIG upon request all documents and financial records sufficient to establish compliance with subsection 601(d) of the Social Security Act, as amended, (42 U.S.C. 801(d)).

Records to support compliance with subsection 601(d) may include, but are not limited to, copies of the following:

1. general ledger and subsidiary ledgers used to account for (a) the receipt of Coronavirus Relief Fund payments and (b) the disbursements from such payments to meet eligible expenses related to the public health emergency due to COVID-19;
2. budget records for 2019 and 2020;

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

3. payroll, time records, human resource records to support costs incurred for payroll expenses related to addressing the public health emergency due to COVID-19;
4. receipts of purchases made related to addressing the public health emergency due to COVID-19;
5. contracts and subcontracts entered into using Coronavirus Relief Fund payments and all documents related to such contracts;
6. grant agreements and grant subaward agreements entered into using Coronavirus Relief Fund payments and all documents related to such awards;
7. all documentation of reports, audits, and other monitoring of contractors, including contractors, including subcontractors, and grant recipient and subrecipients;
8. all documentation supporting the performance outcomes of contracts, subcontracts, grant awards, and grant recipient subawards;
9. all internal and external email/electronic communications related to use of Coronavirus Relief Fund payments; and
10. all investigative files and inquiry reports involving Coronavirus Relief Fund payments.

N. DHS Seal, Logo, and Flags

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

O. No Obligation by Federal Government

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

P. Compliance with Law

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

Q. Termination and Remedies

1. **For Convenience:** The City may terminate this Agreement at any time and for any reason by giving the Contractor written notice of the termination. The written

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

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 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.

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

**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

**CITY OF SAN JOSE
HOUSING DEPARTMENT
GRANT AGREEMENT**

shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, PATH, 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.



Signature of Contractor's Authorized Official

Jennifer Hark-Dietz, Deputy CEO & Executive Director
Name and Title of Contractor's Authorized Official

10/08/20
Date