

AGREEMENT

This Agreement (“**Agreement**” or “**Contract**”) dated June 15, 2020 is made by and between the City of San José, located at 200 E. Santa Clara St. 9th Floor, San José, CA 95113, (“**City**”) and the County of Santa Clara (“**County**”), located at 70 West Hedding Street, 11th Floor East Wing, San José, CA 95110. City and County may be individually referred to herein as a “Party” or collectively referred to as the “Parties.”

RECITALS

WHEREAS, on February 3, 2020, the County Health Officer declared a local health emergency, and the County's Director of Emergency Services proclaimed a local emergency, to respond to the Coronavirus Disease (COVID-19) pandemic and manage its spread throughout the County; and

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

WHEREAS, on March 6, 2020, the 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 the City; and

WHEREAS, on March 16, 2020, the Santa Clara County Public Health Officer issued an Order (County 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 County 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 State Executive Orders and their national counterparts, County Order, and City Proclamation of Local Emergency in response to COVID-19, as may be extended and modified by federal, state, and local authorities, the County and City have identified an urgent need to provide non-congregate shelters (NCS), such as motels and hotels (collectively motels), to assist homeless persons who, because of their age and/or underlying health conditions, are at greater risk for serious illness or death if they contract COVID-19 and to assist homeless persons in complying with the shelter in place orders and to limit the spread of COVID-19 (collectively NCS); and

WHEREAS, on or about June 15, 2020, the City transitioned residents out of and ended its COVID-19 travel trailer program (Trailer Program), which had been a part of the network of NCS in San José and countywide due to the City's concerns about the safety of some of the trailers, the cost-effectiveness of the Trailer program, and the accessibility of the trailers for individuals with functional needs; and

WHEREAS, at the termination of the City’s Trailer Program, in cooperation with the City, the County transitioned 25 homeless households from the City’s Trailer Program to existing hotels that the County had under contract at that time, added an additional 72 motel rooms in San José to the County’s existing capacity, and added an additional 25 motel rooms in Morgan Hill; and

WHEREAS, as of June 15, 2020, the County estimated its current NCS total capacity of 746 motel rooms; and

WHEREAS, the County estimates that approximately 70% of all persons placed in motel rooms as part of the County’s NCS program are from San José; and

WHEREAS, the City’s funds granted to the County pursuant to this Agreement are intended to support during the term of this Agreement the equivalent of approximately 90 motel rooms, but the funding is not restricted to be used for any specific motel or motel rooms; and

WHEREAS, the City’s funds are intended to help the County and City leverage Federal Emergency Management Agency (FEMA) Public Assistance funds, as available; and

WHEREAS, noncompetitively procured contracts are allowed by the Federal Emergency Management Agency (FEMA) under 2 C.F.R. Section 200.320(f)(2) when exigent and emergency circumstances exist, and the immediate need for COUNTY’s services and procurement of these services through a competitive process would cause unacceptable delay in addressing the COVID-19 public health emergency.

NOW THEREFORE, THE CITY AND COUNTY AGREE AS FOLLOWS:

1. **PROGRAM DESCRIPTION:** The County shall use the City’s funds contributed pursuant to this Agreement to support its NCS program (Program) as described in the Scope of Work attached to this Agreement as Exhibit A and incorporated herein by this reference.
2. **ESTIMATED COSTS AND MAXIMUM FINANCIAL OBLIGATION:** Notwithstanding any other provision of this Agreement, City shall pay County a maximum total not to exceed amount of \$1,794,447 to be funded by City Coronavirus Aid, Relief, and Economic Security (CARES) Act or other funds as determined by the City. If the Term is extended, City agrees to pay County a mutually agreed-upon additional amount in excess of the total maximum not to exceed amount. While the City’s funds shall be used to provide overall support to City residents as defined in Section 3d, the City’s maximum financial obligation is calculated using estimates for supporting approximately 90 motel rooms to be calculated as follows:
 - a. The estimated cost for operating one motel room for one month is \$4,628.

<u>Activity</u>	<u>Est. Rate / Per Unit Cost</u>	<u>Avg. Rooms Per Site</u>	<u>Avg. Monthly Cost per Room</u>
Motel Room Rate & Tax	Average of \$107 per night	NA	\$ 3,210
Site Management	\$25,000 per site per month	68.4	\$ 365
Information & Referral Services	\$20,833 per site per month	68.4	\$ 305
Security	\$48,400 per site per month	68.4	\$ 708
Laundry Services	\$40 per household per month	NA	\$ 40
Sub-Total			\$ 4,628

- b. Transportation is a non-recurring service and would typically be provided when someone is placed at a motel and when they would transition to another location. Each “roundtrip” could cost up to \$400 if a gurney van (non-urgent, medical transport) is needed. Once a motel site is filled, turnover rate shall be no more than 25% of the units each month. The estimated cost for transportation through September is \$63,000. For ease of planning, this cost is distributed evenly monthly.
- c. Administrative expenses are calculated to be 10% of total costs.
- d. The City’s maximum financial obligation through October 15, 2020 is estimated to be \$1,794,447.

3. USE OF CITY FUNDS: The City’s funding may only be used to reimburse the County for actual expenses that are used to support homeless City residents through the County’s network of motel rooms used throughout Santa Clara County. To maximally leverage FEMA Public Assistance funds, the County will submit reimbursement requests to FEMA, through CalOES. The City’s funds will be used for any of the following:

- a. Direct Expenses limited to the following:
Direct Expenses – will be reimbursed based on actual costs for San Jose residents.
 1. Motel room rates and taxes for homeless persons. Backup documentation for renting motel rooms may include agreements with motels documenting the motel rate and invoices from motels.
 2. Motel room repair beyond normal wear and tear. Back-up documentation will include the invoice for such repair.
 3. Transportation costs to transport individuals and families into the motels. Backup documentation may include agreement(s) with contractors, and invoices or receipts from CBOs or taxis and payroll registers or accounting records.
- b. Shared Expenses – will be reimbursed on a pro rata share of such shared costs based upon the percentage of room nights at a particular site that are identified as San Jose residents as defined in this Agreement. The pro rata calculation will be included for each reimbursement request.
 1. Laundry – documentation may include an agreement and invoice or receipt.
 2. Meals (if not provided by the City). Back-up documentation may include an agreement for food delivery and the invoice.

3. Motel room rates and taxes for rooms that are used as offices by staff (not more than three rooms per site).
 4. Personnel costs of staff and contractors performing site management. However, the actual costs will include payments to CBOs for salaries and benefits and operating costs (e.g., cell phones); actual costs may also include salaries and benefits of County personnel deployed to motel sites. Backup documentation would include invoices and payments to CBOs and/or payroll registers or accounting records.
 5. Personnel costs of staff and contractors providing information and referral services provided by social workers or case managers. The total number of social workers assigned to each site will vary based on the number of rooms at each motel site. However, actual costs will include payments to CBOs for salaries and benefits and operating costs (e.g., cell phones); actual costs may also include salaries and benefits of County personnel deployed to motel sites. Backup documentation would include invoices and payments to CBOs and/or payroll registers or accounting records.
 6. Security. For each site, the County will contract with a private security firm to provide a certain number of security personnel per shift per day. Backup documentation will may include a copy of the agreement(s) with the security firm(s) and/or invoices from the security firm(s).
- c. The City's funds may be used for expenses, described in Sections 3a and 3b, including the portion of expenses that is calculated to be the local match for the FEMA Public Assistance program expenses and expenses, such as information and referral services, that may be categorically ineligible for the FEMA Public Assistance program.
 - d. The County's administrative expenses through October 15, 2020 or the date that Rue Ferrari opens, whichever is earlier or such other termination date agreed to by the Parties, based upon the 10% overhead number above.
 - e. Eligible participants are City of San Jose residents, who are homeless persons and their family members whose age or health conditions put them at greater risk for serious illness or death if they contract COVID-19 as defined by FEMA or the local Public Health Officer. For homeless persons and families, their residency is determined by the location of their last permanent address or the city or unincorporated area where they spend most of their time.

4. DOCUMENTATION AND DESCRIPTION OF COSTS: The County shall submit contracts, invoices and supporting documentation for any eligible cost up to the maximum dollar amount. City shall submit payment in such form as reasonably requested by County within thirty (30) days of receipt of County's invoice. The County may submit invoices to the City even if FEMA has not decided on the County's request(s) for reimbursement under FEMA's Public Assistance program. Amounts paid by the City with respect to the Program shall be supported by backup documentation necessary to seek reimbursement under FEMA's Public Assistance program and meet the documentation requirements under the Federal CARES Act. County shall

document each homeless person’s eligibility, which should include information about the homeless person’s race and ethnicity, homeless status, zip code of last permanent residence and COVID-19 assessment in accordance with local Homeless Management Information System (HMIS) and Continuum of Care (CoC) standards in addition to collecting back-up documentation for costs that will be billed to the City. The County shall provide backup documentation to demonstrate expenditures made related to sheltering City residents.

5. COMPLIANCE REPORTING:

- a. Monthly reports prepared by the County shall include:
 - General Statistics
 - i. Number of unduplicated homeless people sheltered
 - ii. Program participant statistics including:
 - 1. Race
 - 2. Ethnicity
 - 3. Gender
 - 4. Age
 - 5. Household type: Single, couples, families with children
 - 7. In accordance with HMIS standards, destinations upon exit of NCS program
- b. The County shall provide an Actual Expenditures Report with a summary of the funds drawn and available funds.
- c. The County shall provide copies of such reports monthly to the City.

6. TERM AND TERMINATION:

- a. This Agreement is effective retroactively starting June 15, 2020 (the “Effective Date”) and shall continue through the earlier of October 15, 2020 or the date the Emergency Interim Emergency Housing Community on Rue Ferrari opens and accepts new residents, unless terminated sooner or extended as provided by the terms of this Agreement (“Term”).
- b. The Parties may mutually agree in writing to extend the Term of this Agreement beyond October 15, 2020. The Parties shall agree to any extension at least thirty (30) days prior to the end of the Term in effect at the time of the extension.
- c. Either Party may terminate this Agreement for material breach: The non-breaching Party shall give the breaching Party written notice specifying the material breach, and the breaching Party shall have five (5) business days (“Cure Period”) within which to cure the material breach. If the material breach is not cured within the Cure Period, the non-breaching Party shall have the right to terminate this Agreement upon the day following the Cure Period (the “Termination Date”). Nothing herein shall limit any other rights or remedies either Party may have under the law.

- d. Termination for Unavailability of Funds. In the event of reduction, suspension, discontinuance or other unavailability of funds not within the discretion of the City, City unilaterally may take appropriate action(s) including, but not limited to, immediately canceling or reducing existing service authorization, stopping or reducing further referrals of individuals, and/or reducing the maximum dollar amount of this Agreement. City shall give County no less than sixty (60) business days' advance written notice of the action(s) City intends to take as a result of the unavailability of funds. City shall not be liable for start-up costs, or lost profits in the event of early termination.

7. FORCE MAJURE:

- a. Neither Party shall be liable to the other for any unforeseeable interruption, delay, or failure to perform any covenant or promise contained in this Agreement caused directly by acts of God, network failures, acts of civil or military authorities, government orders, war, civil disturbances, energy crises, transportation contingencies, interruptions in third-party telecommunications, or other catastrophes or occurrences which are reasonably beyond such Party's control; provided that any such delay or failure shall be remedied by such Party using commercially reasonable efforts as soon as possible after removal of the cause of such delay or failure. Substantial Disruptions to the supply chain that prevent performance by County shall be considered a force majeure event.
- b. The Parties shall use reasonable care to protect against the effects of force majeure, and the Party seeking relief under this provision shall promptly notify the other Party in writing, citing the details of the force majeure event and relief sought, and shall resume performance immediately after the obstacles to performance caused by force majeure have been removed.
- c. Interruption, delay, or failure to perform any covenant or promise contained in this Agreement caused directly by a force majeure event, shall be excused for the period of delay caused solely by the force majeure event. Neither Party shall recover any claim for damages from the other if that claim for damages is caused directly by force majeure.

8. RECORD RETENTION:

County agrees to retain all records pertaining to the Program ("**Records**") and make said Records available for inspection by City, State and Federal authorities upon written request. County will retain Records for a period of five (5) years after the date of final payment made for the Program provided under this Agreement ("**Retention Period**"). City may, upon written request and no later than sixty (60) days prior to the end of the Retention Period request that County retain Records for a reasonable time beyond the Retention Period. County agrees to make Records available for inspection by City upon written request. County will provide to City document requisition support in the event of an audit by a State or Federal authority. City shall be responsible for notifying County within three (3) business days of receiving any information from a State or Federal agency of an audit. City shall be responsible for forwarding the complete

written notification from the governing entity so that County is positioned to best support the requisition request and tailor the support to exactly what is required.

The Parties acknowledge that each Party must justify eligible expenditures and properly support a request for reimbursement from federal, State, or other grant funds for the cost of Services.

9. NOTICES:

Manner of Giving Notice: All notices and other communications required by this Agreement must be in writing, and must be made via e-mail, personal service or United States mail, postage prepaid.

When Effective: A notice or other communication that is e-mailed is effective when sent provided the sender receives an acknowledgement from the intended recipient (e.g. return receipt, return e-mail, or another written acknowledgement). A notice or other communication that is personally served is effective when personally delivered. A notice or other communication that is mailed is effective 3 calendar days after deposit in the United States mail.

To Whom Given: All notices and other communications between the parties regarding the Agreement must be given to the individuals identified below using the appropriate contact information for giving notice:

To the City: City of San José
Attn: Housing Department
Name: Jacky Morales-Ferrand
Phone: (408) 535-3855
Address: 200 E. Santa Clara Street, San Jose, CA 95113
Email: Jacky.Morales-Ferrand@sanjoseca.gov

To the County: County of Santa Clara
Office of Supportive Housing
Attn: Consuelo Hernandez
Phone: 408-278-6419
Address: 2310 North First St., Suite 201
San Jose, CA 95131
Email: Consuelo.Hernandez@hhs.sccgov.org

Changing Contact Information: Either party may change its contact information for receiving written notices and communications regarding the Agreement by providing notice of such change to the other party pursuant to this paragraph 9.

10. INDEMNITY AND LIMITATION OF LIABILITY: COUNTY and CITY agree that, pursuant to Government Code Section 895.4, each of the Parties hereto shall fully indemnify and hold each of the other Parties, their officers, board members, employees, and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees or agents, under or in

connection with or arising out of any work, authority or jurisdiction delegated to such party under this AGREEMENT. No party, nor any officer, board member or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other Parties hereto, their officers, board members, employees, or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to such other Parties under this Agreement.

11. SEVERABILITY:

If any provision of this Agreement should be held invalid or unenforceable, then that provision only shall be modified to the extent necessary to make such provision valid and enforceable. All other provisions shall be unaffected and shall remain in full force and effect, to the extent consistent with the intent of the Parties as evidenced by this Agreement as a whole.

12. SURVIVAL OF CERTAIN TERMS:

The provisions of this Agreement which, by their nature should survive, shall survive expiration or termination of this Agreement for any reason.

13. WAIVER:

All waivers must be in writing and signed by the Party to be charged. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

14. ENTIRE AGREEMENT; MODIFICATION AND AMENDMENT; COUNTERPARTS:

- a. This Agreement constitutes the final, complete and exclusive agreement of the Parties with respect to the matters addressed in it and supersedes all prior and contemporaneous agreements, communications, negotiations or understandings between the Parties with respect to the matters addressed in it.
- b. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted and this Agreement shall be read and enforced as though it were included. If changes in Federal or State law, or their implementing regulations require any provision(s) of this Agreement to be modified, such modification shall automatically be incorporated into and made part of this Agreement on the effective date of such required change.
- c. Except as provided above, no modification of this Agreement shall be effective unless agreed to in writing by both Parties.
- d. This Agreement may be executed in any number of counterparts and by each party in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

- e. Unless otherwise prohibited by law or County 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 transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the County.

15. COOPERATION OF THE PARTIES:

The Parties acknowledge that fulfilment of the terms of this Agreement may be frustrated or prevented by circumstances outside the Parties' control. The Parties agree to cooperate fully, work in good faith, and mutually assist each other in the performance of this Agreement and shall work to resolve problems associated with this agreement. Neither Party will unreasonably withhold its approval of any act or request of the other to which the Party's approval is necessary or desirable.

16. ASSIGNMENT:

Neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party.

17. SUBCONTRACTING:

County may subcontract with any third party for Services related to this Agreement with notice to the City.

18. CHOICE OF LAW:

This Agreement shall be construed and governed by the laws of the State of California. Any lawsuit relating to this Agreement shall be instituted in a state or federal court in the Northern District of California, and the Parties irrevocably consent and waive all objections to the jurisdiction of any such court.

19. SECTION HEADINGS:

Section headings or titles are for convenience only and shall have no substantive effect in the interpretation of this Agreement.

20. RECITALS:

The Recitals are incorporated and made a part of this Agreement.

21. FEDERAL FUNDING AND FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA):

Both parties may seek reimbursement from FEMA or the State of California or otherwise for the costs associated with this Agreement. Both parties agree to cooperate in responding to all requests relating to seeking of reimbursement from FEMA, the State, or otherwise. Both parties agree to comply with the County of Santa Clara Federally Required Contract Provisions attached as Exhibit B. In the event of conflict between this Agreement and Exhibit B, Exhibit B shall govern. With regard to Services provided under this Agreement, in no event shall City have any recourse against County for costs that are not reimbursed, clawed-back, or otherwise disallowed by any agency, state, federal, or otherwise, including without limitation FEMA.

22. COMPLIANCE WITH LAWS; CONFLICT OF TERMS:

- a. COUNTY shall comply with the applicable requirements of the CARES Act, and with applicable regulations, policies, guidelines, Office of Management and Budget (OMB) circulars, and field memoranda promulgated by United States Department of Labor (DOL), the State of California and CITY, and/or any legislation which may replace the CARES Act, and all other applicable federal, state and local rules, regulations and laws. Moreover, neither CITY nor COUNTY shall make any payments that would be in violation of any law existing during the term of this Agreement, including but not limited to any maximum amount of administrative fee(s).

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- b. In the event there is there are conflicting terms in this Agreement of 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.

City of San José

DocuSigned by:
 By: Leland Wilcox
 Name: Leland Wilcox
 Title: Chief of Staff
 Date: 9/17/2020

County of Santa Clara

DocuSigned by:
 By: James R. Williams
 Name: James R. Williams
 Title: EOC Director
 Date: 9/17/2020

Approved as to Form:

DocuSigned by:
René Alejandro Ortega
 René Alejandro Ortega
 Senior Deputy City Attorney

Approved as to Form and Legality:

DocuSigned by:
Christopher R. Cheleden
 Christopher R. Cheleden
 Lead Deputy County Counsel

**EXHIBIT A
SCOPE OF WORK**

1. PROGRAM DESCRIPTION: The City’s funds shall support an NCS program using motels. In addition to motel staff and standard motel services, each motel site used in this program will provide or offer:
 - a. Site management;
 - b. Information and referral services (as in “light case management”) to help participants access other services (e.g., apply for CalFresh) and take steps toward obtaining permanent housing (e.g., completion of assessments for the Coordinated Assessment System) or increasing income (e.g., starting applications for Supplemental Security Income);
 - c. For each participant, three prepared meals daily;
 - d. Laundry services if laundry machines are not available onsite;
 - e. Contracted security officers to protect the privacy and safety of all persons;
 - f. Transportation to and from the motel(s);
 - g. Medical screening at placement, and, if necessary, wellness calls or checks by medical and behavioral health professionals; and,
 - h. Access to other temporary shelter or permanent housing based on availability.

2. SERVICES PROVIDED BY THE COUNTY:

- a. The County will execute and maintain agreements with the motels, security firms, community-based organizations and other service providers to provide the NCS services, except for prepared meals. The County may deploy County personnel to augment contractors as needed.
- b. Continue operating a central referral system to help homeless persons access congregate and non-congregate shelter through July 31, 2020. After July 31, the County and City will determine how to operate and fund a central referral process for the NCS supportive housing system.
- c. The County will screen all participants for medical and behavioral health needs and connect participants to necessary services based on the availability of those services.
- d. Maintain documentation necessary to seek reimbursement from the FEMA Public Assistance program.

3. SERVICES PROVIDED BY THE CITY:

- a. The City will provide three prepared meals daily.
- b. The City's new Emergency Interim Housing Communities, once constructed and placed into service, will be prioritized for up to 90 individuals and families who are residing in the motel rooms of the Program. This will allow the County to partially demobilize the network of motels in San Jose.

Exhibit B

COUNTY OF SANTA CLARA
FEDERALLY REQUIRED CONTRACT PROVISIONS

The federally required contract provisions listed below are made a part of the Contractor's Contract with the County.¹

The term "Contractor", as used throughout this document shall mean the contractor identified in the Contract as Contractor, Provider, Consultant, or similar term.

The term "Contract" as used throughout this Exhibit shall mean the contract or other agreement, with exhibits, into which this Exhibit is incorporated.

The term "State" as used throughout this document shall mean the State of California and include any of its departments or agencies.

These federally required contract provisions will collectively be referenced as the "FEMA Contract Terms."

The terms and conditions of the Contract and the FEMA Contract Terms should be read to operate in concert, except where directly in conflict. In the event of a conflict between the terms of the Contract and the FEMA Contract Terms, and unless otherwise stated within the terms of this Exhibit, the FEMA Contract Terms shall govern and prevail.

A. No Obligation by the Federal Government:

The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the Contract.

B. Access to Records:

- (1) Upon request, the Contractor agrees to provide the County, State, Federal Emergency Management Agency (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 the Contract 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.

¹ The County intends to seek reimbursement from federal and state grants, e.g., the Federal Emergency Management Agency's Public Assistance grants and California Governor's Office of Emergency Services grants, for the goods and/or services provided under the Contract to the extent they are procured as part of emergency protective measures or disaster response measures undertaken by the County.

- (3) Upon request, the Contractor agrees to provide the FEMA Administrator or the FEMA Administrator's authorized representatives access to construction or other work sites pertaining to the work being completed under the Contract.
- (4) In compliance with the Disaster Recovery Act of 2018, the County of Santa Clara and the Contractor acknowledge and agree that no language in this Contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

C. Procurement of Recovered Materials:

- (1) In the performance of this Contract, the Contractor shall make maximum use of products containing recovered materials that are United States Environmental Protection Agency-designated items unless the product cannot be acquired—
 - i. Competitively within a timeframe providing for compliance with the Contract performance schedule;
 - ii. Meeting Contract performance requirements; or
 - iii. At a reasonable price.
- (2) Information about this requirement along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- (3) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

D. Department of Homeland Security (DHS) Seal, Logo and Flags:

The Contractor shall not use the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials without specific FEMA approval.

E. Compliance with Federal Law, Regulations, and Executive Orders:

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

F. Program Fraud and False or Fraudulent Statements or Related Acts:

The Contractor acknowledges that 31 USC Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract.

G. Equal Employment Opportunity:

If the Contract is for construction work, the provisions of this Section G shall apply.

During the performance of this Contract, the Contractor agrees as follows:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, 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, sexual orientation, gender identity, 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 consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.
- (4) 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.
- (5) 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.
- (6) 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.
- (7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract 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.
- (8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) 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. The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

H. Clean Air Act and the Federal Water Pollution Control Act:

The provisions of this Section H apply to contracts exceeding \$150,000.

Clean Air Act:

- (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 County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the State, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act:

- (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 County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the State, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

I. Byrd Anti-Lobbying Amendment:

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by the Byrd-Anti-Lobbying amendment. 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 recipient who in turn will forward the certification(s) to the awarding agency.

Required Certification:

APPENDIX A, 44 C.F.R. PART 18- 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 Contractor, _____, 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

Name and Title of Contractor's Authorized Official

Date

J. Contract Work Hours and Safety Standards Act:

The provisions of this Section J apply to contracts over \$100,000 that involve the employment of mechanics and laborers.

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the Contract 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 County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

K. Debarment and Suspension:

- (1) This Contract may be 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 County. 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 County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer 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 the Contract. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

L. Termination for Cause:

If the Contract value exceeds \$10,000, to the extent the Contract does not provide for termination for cause outside of this Exhibit, and in addition to any right to terminate for convenience as described in the Contract, the County may, after providing five days' written notice, terminate the Contract for the Contractor's failure to perform or observe any term, covenant, or condition of the Contract.

M. Remedies:

In the event of a breach by the Contractor of any term, covenant, or condition of the Contract, the County shall have the right to pursue all available remedies at law or equity. Except as expressly provided elsewhere in this Contract, each party's rights and remedies under this Contract are cumulative and in addition to, not exclusive of or in substitution for, any rights or remedies otherwise available to that party.

N. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms:

If this Contract was awarded in a competitive procurement, Contractor engages subcontractors to perform work under the Contract, and the Contract is for \$10,000 or above, Contractor shall place qualified small and minority businesses and women's business enterprises on solicitation lists used in the procurement; solicit small and minority business and women's business enterprises; divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises; establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women's business enterprises; and use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

O. Subcontracts:

To the extent applicable, the Contractor shall include the provisions of this Exhibit in all subcontracts.

P. Copeland "Anti-Kickback"

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

- (3) Breach. A breach of the AGREEMENT clauses above may be grounds for termination of the AGREEMENT, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

Q. Notice of FEMA Reporting Requirements and Regulations:

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

- (1) General: The City is using Public Assistance grant funding awarded by FEMA to the State of California to pay, in whole or in part, for the costs incurred under this Agreement. As a condition of Public Assistance funding under (major disaster or emergency) declaration, FEMA requires the State of California to provide various financial and performance reporting.
 - a. It is important that the Contractor is aware of these reporting requirements, as the City may require the Contractor to provide certain information, documentation, and other reporting in order to satisfy reporting requirements to the State of California which, in turn, will enable the State of California to satisfy reporting requirements to FEMA.
 - b. Failure of State of California to satisfy reporting requirements to FEMA is a material breach of the FEMA-State Agreement, and could result in loss of Federal financial assistance awarded to fund this Agreement.
- (2) Applicable Regulations and Policy: The applicable regulations, FEMA policy, and other sources setting forth these reporting requirements are as follows:
 - a. 44 C.F.R. § 13.40 (Monitoring and Reporting Program Performance)
 - b. 44 C.F.R. § 13.41 (Financial Reporting)
 - c. 44 C.F.R. § 13.50(b) (Reports)
 - d. 44 C.F.R. § 206.204(f) (Progress Reports)
 - e. FEMA Standard Operating Procedure No. 9570.14, *Public Assistance Program Management and Grant Closeout Standard Operating Procedure* (Dec. 2013, as may be amended)
 - f. FEMA-State Agreement
- (3) Financial Reporting: The State of California is required to submit the following financial reports to FEMA:
 - a. Initial Report: An initial Federal Financial Report (SF 425) no later than 30 days after FEMA has approved the first Public Assistance project.
 - b. Quarterly Reports: Following submission of the initial report, quarterly Federal Financial Reports until submission of the final report described in the following subparagraph. Reports are due on January 30, April 30, July 30, and October 30.
 - 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.

R. 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.