

**SANTA CLARA COUNTY  
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)  
CITY/COUNTY CONTRACT  
between the  
COUNTY OF SANTA CLARA and TOWN OF LOS GATOS  
FY2023**

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**Contract No. LG-23-01- Adult Recreation Center Restrooms**

**CDBG Grant Amount: \$140,000**

THIS Contract (hereinafter "CONTRACT" or "AGREEMENT") is made and entered into pursuant to the Catalog of Federal Domestic Assistance (CFDA) 14.218 by and between the **COUNTY OF SANTA CLARA**, a political subdivision of the State of California (hereinafter "COUNTY"), and the **TOWN OF LOS GATOS** (hereinafter "CITY" or "SUBRECIPIENT") participating as a member of the County of Santa Clara COMMUNITY DEVELOPMENT BLOCK GRANT (hereinafter "CDBG") Joint Powers Agreement. The allocation of funds pursuant to this CONTRACT is a grant. COUNTY approved the allocation and disbursement of Community Development Block Grant (hereinafter "CDBG") funds on **May 3, 2022**.

**RECITALS**

WHEREAS, COUNTY has applied for and received Community Development Block Grant (hereinafter "CDBG") Entitlement Program funds (hereinafter "FUNDS"), identified more specifically as **B-21-UC-06-0007**, from the United States Department of Housing and Urban Development (hereinafter "HUD") as an entitlement jurisdiction pursuant to the provisions of Title 1 of the Housing and Community Development Act of 1974, Public Law 93-383 as amended (hereinafter "ACT"); and

WHEREAS, these FUNDS were received pursuant to CFDA Number 14.218 Department of Housing and Urban Development Community Development Block Grant Entitlement Grants; and

WHEREAS, COUNTY on **May 3, 2022**, authorized the allocation of CDBG FUNDS for **Fiscal Year 2023** in the total amount of **Two Million Two Hundred Fifty Thousand and Nine Hundred Thirty Five Dollars (\$2,252,935)**; and

WHEREAS, said allocation of FUNDS pursuant to this CONTRACT is a grant and includes **One Hundred Forty Thousand Dollars (\$140,000)** to SUBRECIPIENT; and

WHEREAS, COUNTY has agreed to grant to SUBRECIPIENT a portion of COUNTY'S CDBG FUNDS for the PROGRAM as described below to be operated within COUNTY and the Program will benefit low-, very low- and extremely low-income households, as described herein; and

WHEREAS, COUNTY has agreed to the use by CITY, as a SUBRECIPIENT, a portion of COUNTY'S CDBG Entitlement Program funds for a Housing and Community Development Program to be operated within the COUNTY and which shall benefit extremely-low, very-low, and low income households.

NOW, THEREFORE, the parties agree as follows:

**SECTION 1. PROGRAM**

**SECTION 1.1** COUNTY agrees to allocate a portion of its current CDBG FUNDS, and/or program income as defined in Title 2 Code of Federal Regulations (hereinafter "CFR") Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (hereinafter "UNIFORM ADMINISTRATIVE REQUIREMENTS") to SUBRECIPIENT, the total sum of One Hundred Forty Thousand Dollars (\$140,000) for the purpose of reimbursing SUBRECIPIENT for project and activity costs and expenses that are allowed and incurred in the implementation of the SUBRECIPIENT's program (hereinafter "PROGRAM"), as more particularly described in numerous Exhibits marked as noted herein, attached to this Contract, incorporated by this reference. Reimbursement for **Fiscal Year 2023** shall not exceed the total sum of the beginning balance of the Fiscal Year 2021 CDBG Funds allocated to CITY, and any roll-over of unexpended CDBG Funds from previous year's allocations to CITY. Such authority is contingent upon CITY's and its subrecipients' full compliance at all times with all Federal Rules and Regulations governing the CDBG Program, the COUNTY CDBG Reallocation Guidelines, and all other applicable laws.

**SECTION 2. TERM**

**SECTION 2.1** The purpose of this CONTRACT is for the COUNTY to disburse CDBG FUNDS for eligible activities relating to SUBRECIPIENT PROGRAM. Unless amended or terminated prior to its expiration, the term of this CONTRACT for FY2021 disbursement and expenditure purposes will begin on **July 1, 2022** and the CONTRACT will end on June 30, 2023.

**SECTION 2.2 RENEWAL TERM.** The Parties may mutually agree to renew this AGREEMENT through a contract amendment.

**SECTION 3. OBLIGATIONS OF SUBRECIPIENT**

**SECTION 3.1 SUBRECIPIENT** will provide COUNTY with written certification that the following information is on file at the CITY offices, and is subject to monitoring by HUD and/or COUNTY (County's Housing and Community Development Department, "OSH") OSH staff, or their representatives:

- a. Names and addresses of the current CITY Manager and CITY Council members.
- b. Records of all discussions and actions taken at CITY Council meetings pertaining to the CDBG PROGRAM.
- c. Information and housing objectives for the Consolidated Plan required by HUD at the beginning of each program year.

**SECTION 3.2 Program Performance by Subrecipient.** SUBRECIPIENT warrants and represents that it shall do all of the following:

- a. Conduct the PROGRAM within Santa Clara County for the purpose of benefiting extremely low, low-or-moderate income households as defined in Exhibit A2 attached to this AGREEMENT, and
- b. Ensure PROGRAM activities within Santa Clara County benefitting low –or-moderate- income (LMI) individuals or households require a minimum **45.43%** of clients be of low –or -moderate-income, and
- c. Ensure PROGRAM activities within Santa Clara County benefitting low-and-moderate-income housing (LMH) activities require **100%** of homeowners be of low-or-moderate-income, and
- d. Ensure PROGRAM activities within Santa Clara County benefitting low-and-moderate-income area (LMA) activities require that at least **38.49%** (County CDBG exception percentage) of residents of that area be of low- or -moderate- income.

- e. The SUBRECIPIENT shall be responsible for administering PROGRAM as more fully described in Exhibit “A”, in a manner satisfactory to the COUNTY and consistent with any and all standards required as a condition of providing these Funds.
- f. File Quarterly Progress Reports (hereinafter "QPR") as required by COUNTY on the type and number of services rendered through the operation of the PROGRAM, and a description of the beneficiaries of these services, and the QPR will evaluate the manner in which the PROGRAM is achieving its objectives and goals according to the standards established by COUNTY. The QPR will be due ten days after the close of each quarter and must cover the three months immediately preceding the date on which the QPR is filed, except for the 4<sup>th</sup> quarter. The 4<sup>th</sup> and final quarter report shall be due five days after the close of the fiscal year.
- g. Coordinate its services with other existing organizations providing similar services in order to foster community cooperation and to avoid unnecessary duplication of services.
- h. Seek out and apply for other sources of revenue in support of its operation or services from local, state, federal and private sources and, in the event of receipt of such award(s), inform COUNTY in writing within ten days of receipt of such award.
- i. Include an acknowledgement of COUNTY funding and support on SUBRECIPIENT stationery relating to the PROGRAM and on all appropriate PROGRAM-related public or County publications using words to the effect: “funded in whole or in part by the County of Santa Clara through the Housing and Community Development Act of 1974, as amended.”

**SECTION 3.3 Fiscal Responsibilities of CITY.** CITY shall:

- a. Appoint and submit the name of a fiscal agent who will be responsible for the financial and accounting activities of SUBRECIPIENT, including the receipt and disbursement of SUBRECIPIENT Funds. The COUNTY must be notified immediately in writing of the appointment of any new fiscal agent and that agent’s name.
- b. Comply with the requirements and standards of Title 24 Code of Federal Regulations, Part 570 of the Housing and Urban Development regulations concerning CDBG and all federal regulations and policies issued pursuant to these regulations and 2 CFR Part 200, UNIFORM ADMINISTRATIVE REQUIREMENTS.
- c. Document all PROGRAM costs by maintaining records in accordance with Section 3.4 below.
- d. Submit to the COUNTY, based on an agreed upon schedule, a request for payment, together with all supporting documentation. Invoices requesting disbursements submitted after the expiration of the CONTRACT will be honored only for eligible charges incurred during the CONTRACT term. All invoices must be submitted by the CONTRACT expiration date or within such other time period specified by the COUNTY for this CONTRACT term. Funds not disbursed will be reprogrammed for future reallocation by the County or may be carry forwarded and included into the SUBRECIPIENTS next fiscal year contract.
- e. Certify current and continuous insurance coverage, subject to COUNTY approval and in accordance with requirements as outlined in Exhibit F, “Insurance Requirements.”
- f. Make all reasonable efforts to submit final invoices to COUNTY by April 1, 2023 to draw down the entirety of the allocation of funds herein by April 15, 2023 to ensure COUNTY complies with “timely performance” in accordance with the CDBG regulations 24 CFR 570.902 and to ensure the COUNTY is able to meet the timeliness test 60 days prior to the end of the program year, which is usually on or around April 30.
- g. Items a. through f. above are express conditions precedent to disbursement of any COUNTY funding and failure to comply with these conditions will, at discretion of COUNTY, result in suspension of funding or termination of this CONTRACT.

- h. If SUBRECIPIENT does not use CDBG Funds in accordance with the requirements of this CONTRACT, SUBRECIPIENT is liable for repayment of all disallowed costs. Disallowed costs may be identified through audits, monitoring or other sources. SUBRECIPIENT is required to respond to any adverse findings which may lead to disallowed costs subject to provisions of 2 CFR Part 200 Subpart E, “Cost Principles.”

**SECTION 3.4 CDBG Housing Rehabilitation Revolving Loan Fund Conditions.** If CITY maintains a Revolving Loan Fund (“RLF”), CITY will maintain the RLF as a separate fund (with a set of accounts that are independent of other program accounts) established for the purpose of carrying out specific activities which, in turn, generate payments to the fund for use in carrying out the same activities. The following are additional CITY RLF conditions and requirements:

- a. The RLF must be capitalized only with housing rehabilitation or housing acquisition repayment funds, which are considered CDBG Program Income for CDBG purposes. CDBG program Funds may not be drawn down to serve as the initial available funding or ongoing funding of the RLF.
- b. The RLF will cover a single, specific activity (i.e. housing rehabilitation). Properties that may be assisted under the RLF include:
  - Single-family properties occupied by low- and moderate-income households with annual gross incomes not to exceed 80% of the median area income threshold by family size, as issued by HUD for each program year; and,
  - Multi-family (rental) properties with at least 51% of the units (or such percentage as published by HUD as an exception area) occupied by tenants with annual gross incomes which meet the same HUD annual income thresholds.
- c. Program income received by the RLF from rehabilitation loan principal and interest repayments must be held in an interest bearing account. Note: Principal repayments and the interest paid by borrowers of CDBG-funded loans made from the RLF are considered CDBG Program Income and subject to the CDBG Program Income requirements.
- d. Any accrued interest on the total funds maintained in the account must be returned to HUD annually, to be remitted through the COUNTY to the U.S. Treasury.
- e. The COUNTY’s Consolidated Plan must be amended following a public review process to reflect the establishment of a RLF as a strategy to address priority-housing needs. The scope of the housing RLF should be described.
- f. In future years, the RLF’s estimated production and program income should be incorporated into each Annual Action Plan, as well as accomplishments and program income reported in the Consolidated Annual Performance and Evaluation Report (CAPER).
- g. An amendment of the applicable Annual Action Plan is required in order to transfer any RLF funds to the grantee’s main account for use with non-RLF but eligible activities. (See Title 24 CFR 570 Subpart J, 570.500 “Definitions,” 570.500(b) “Revolving Fund.”

**SECTION 3.5 Establishment and Maintenance of Records:** CITY shall

- a. Maintain complete and accurate records of all its transactions including, but not limited to, contracts, invoices, time cards, cash receipts, vouchers, canceled checks, bank statements, client 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 or anticipated to

be incurred to perform this CONTRACT or to operate the PROGRAM, and (2) all other matters covered by this CONTRACT.

**SECTION 3.6 Preservation of Records.** CITY will preserve and make available its records:

- a. Until four years following from the date the activity is reported in the Urban County's Consolidated Annual Performance Evaluation Report (CAPER) to HUD; or
- b. For such longer period, if any as is required by applicable law; or
- c. If this AGREEMENT is completely or partially terminated, the records relating to the work terminated will be preserved and made available for a period of five years from the date of termination.

**SECTION 3.7 Examination of Records and Project Site:** At any time during normal business hours, and as often as may be deemed necessary, CITY agrees that HUD and the OSH, and/or any duly authorized representatives, may until expiration of (a) five years after final payment under this AGREEMENT, (b) five years from the date of termination of this AGREEMENT, or (c) such longer period as may be described by applicable law, have access to and the right to examine its offices and facilities used in the performance of this AGREEMENT or the operation of the PROJECT, and all its records with respect to the PROJECT and all matters covered by this AGREEMENT. CITY also agrees that the OSH or any duly authorized representatives will have the right to audit, examine, and make excerpts or transactions of and from such records and to make audits of all AGREEMENTS and SUB-AGREEMENTS, invoices, payrolls, records of personnel, conditions of employment, materials and all other data relating to the PROJECT and matters covered by this AGREEMENT. CITY will be notified in advance that an audit will be conducted. CITY will be required to respond to any audit findings and have the responses included in the final audit report. The cost of any such audit will be borne by COUNTY.

The CITY must provide language in its contracts with all subrecipients stipulating that at any time during normal business hours, and as often as may be deemed reasonably necessary, subrecipient agrees that HUD and the COUNTY, and/or any authorized representatives may have access to and the right to examine subrecipient CDBG records and facilities until expiration of:

- a. five years after expiration of this CONTRACT;
- b. five years from the date of termination of this CONTRACT; or
- c. five such longer period as may be prescribed by law.

CITY also agrees that COUNTY and any authorized representatives has the right to audit, examine, and make excerpts or transactions 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 the PROGRAM and matters covered by this CONTRACT. CITY will be notified in writing of intended audits. CITY will be notified in writing of intended inspections of records and facilities and of intended audits no less than three business days before such inspections or audits. CITY is required to respond in writing to the OSH Director any audit findings within thirty (30) days of receipt of written audit findings. Responses will be included in the final audit report.

**SECTION 3.8 Compliance with Law.** CITY staff warrants and represents that it will become familiar and comply with and cause all its subcontractors, independent contractors, and employees, if any, to become familiar and comply with all applicable federal, state and local laws, ordinances, codes, regulations and decrees including, but not limited to, those federal rules and regulations, executive orders, and statutes identified in

Exhibit D “Assurances” and must comply with the requirements and standards of 2 CFR PART 200, Subpart E “Cost Principles” as described in Section 2(A)(9) of this CONTRACT.

**SECTION 3.9 Suspension and Termination.** In accordance with 24 CFR 85.43, suspension or termination of this Contract may occur if the CITY materially fails to comply with any term or condition of this CONTRACT. This CONTRACT may also be terminated for convenience or cause in accordance with 24 CFR 85.44, or in accordance with any other provision of this CONTRACT allowing for contract termination, cancellation or expiration.

**SECTION 3.10 Reversion of Assets.** Upon expiration or termination of this CONTRACT, or in the event HUD cancels its PROGRAM for any reason, the CITY will transfer to the COUNTY any CDBG Funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG Funds. Any real property under the CITY’s control that was acquired or improved in whole or in part with CDBG Funds (including CDBG Funds provided to CITY in the form of a loan) in excess of \$25,000:

- a. Must be used to meet one of the national objectives stated in Title 24 CFR part 570.208 for a period of five years after expiration of this CONTRACT or for such longer period of time as required by the COUNTY; or,
- b. The CITY must reimburse the COUNTY an amount equal to the current market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property (reimbursement is not required after the period of time specified in Section 3.10 above).

**SECTION 3.11 “Section 3” Provisions.**

a. Compliance. Compliance with the provisions of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701, the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this CONTRACT, shall be a condition of the federal financial assistance provided under this CONTRACT and binding upon the COUNTY, the CITY, and any subrecipients. Failure to fulfill these requirements shall subject the COUNTY, the CITY, and any subrecipients, their successors and assigns to those remedies specified in the CONTRACT through which federal assistance is provided and any other remedies available under applicable law. The CITY certifies and agrees that no contractual or other disability exists which would prevent compliance with these requirements. The CITY further agrees to comply with these “Section 3” requirements and to include the following language in all subrecipient contracts executed under this CONTRACT or using CDBG Funds:

*“The work to be performed under the CONTRACT is a project or activity 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. 1701. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project or activity area and agreements for work in connection with the project or activity be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the areas of the project or activity.”*

The CITY certifies and agrees that no contractual or other disability exists which would prevent compliance with these requirements.

b. Notifications. The CITY and its subrecipients must send to each labor organization or representative of workers with which it has a collective bargaining agreement or other agreement or understanding, if any, a notice advising said labor organization or workers' representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

c. Subcontracts. The CITY and its subcontractors will include this Section 3 clause in every contract and will take appropriate action pursuant to the contract upon a finding that the subcontractors is in violation of regulations issued by COUNTY. The CITY will not contract with any subcontractors where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let, authorize, permit or allow any contract unless the subcontractors has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

#### **SECTION 4. OBLIGATIONS OF COUNTY**

**SECTION 4.1 Method of Payment.** During the CONTRACT term, COUNTY shall disburse CDBG Funds to CITY on a reimbursement basis unless otherwise provided herein for all allowable costs and expenses incurred in connection with the PROGRAM, not to exceed the sum of **\$140,000**.

COUNTY may, at any time in its absolute discretion, elect to suspend or terminate payment to, SUBRECIPIENT in whole or in part, pursuant to this CONTRACT based on SUBRECIPIENT's non-compliance, including, but not limited to, incomplete documentation of expenses, failure to substantially meet goals and objectives as required in Exhibits A (Scope of Services, Performance Outcomes and Measurements, and Budget), failure to submit adequate quarterly progress reports as required herein or other incidents of non-compliance as described in Section 6.2 of this CONTRACT or based on the refusal by SUBRECIPIENT to accept any additional conditions that may be imposed by HUD at any time, or based on the suspension or termination of the grant to COUNTY made pursuant to the Housing and Community Development Act of 1974, as amended.

**SECTION 4.2 Non-Compliance.** In the case of CITY substantial non-compliance prior to exercising any recourse authorized herein, COUNTY will initiate the following procedure:

a. Notify the CITY Coordinator in writing of the alleged substantial non-compliance and request an immediate meeting between CITY Coordinator and COUNTY OSH CDBG Program Manager to resolve issues. If issues are not resolved satisfactorily within thirty (30) days, notify CITY Manager in writing requesting an immediate meeting between CITY Manager, CITY Coordinator and COUNTY OSH CDBG Program Manager to resolve the issues.

b. Determine if any portion of the reimbursement request meets all eligible criteria, and if so, authorize payment for the eligible portion of the reimbursement request;

c. Review the procedure to be followed pursuant to Section 6.b. of this CONTRACT (Contract Compliance, Corrective Action Procedure); and

d. If applicable, forward a written report to HUD's Regional Office detailing the substantial non-compliance issues and the steps being instituted to correct performance with a copy to the CITY Manager.

**SECTION 4.3 Compliance with Law.** COUNTY shall become familiar and comply with, and require 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 including, but not limited to, those federal rules and regulations, executive orders, and statutes identified in Exhibit D "Assurances." Specifically, COUNTY shall comply with the requirements of OMB Circular No. A-87, "Principles for Determining Costs Applicable to Grants

and Contracts with State, Local, Federally recognized Indian Tribal Governments,” and OMB Circular A133 “Audits of State and Local Governments.”

In addition, COUNTY will comply with federal regulations as cited in 24 CFR Part 570, Subpart J, and 24 CFR Part 85, and all other local, state or federal laws applicable to this PROGRAM.

**SECTION 5. PROGRAM COORDINATION**

**SECTION 5.1 COUNTY.** The County Executive will assign a single DIRECTOR for COUNTY who will render overall supervision of the progress and performance of this CONTRACT by COUNTY. All services agreed to be performed by COUNTY will be at the overall direction of the DIRECTOR.

**SECTION 5.2 SUBRECIPIENT.** As of the date hereof, SUBRECIPIENT has designated Dan Keller to serve as CDBG Liaison and to assume overall responsibility for the progress and execution of this CONTRACT. The COUNTY will be immediately notified in writing of the appointment of a new CDBG Liaison.

**SECTION 5.3 NOTICES.** All notices or other correspondence required or contemplated by this CONTRACT shall be sent to the parties at the following addresses:

**COUNTY:** County of Santa Clara  
Office of Supportive Housing  
Housing and Community Development  
2310 N. First Street, Suite 201  
San Jose, CA 95131

**CITY:** Laurel Prevetti, Town Manager  
Town of Los Gatos  
41 Miles Avenue  
Los Gatos, CA 95030

All notices must either be hand delivered or sent by United States mail, registered or certified, postage prepaid. Notices given in such a manner will be deemed received when hand delivered or seventy-two (72) hours after deposit in the United States mail. Any party may change his or her address for the purpose of this section by giving five (5) days written notice of such change to the other party in the manner provided in this section.

**SECTION 6. CONTRACT COMPLIANCE**

**SECTION 6.1 Monitoring and Evaluation of Services.** Evaluation and monitoring of the PROGRAM performance is the mutual responsibility of COUNTY and CITY, with the understanding that HUD looks to COUNTY as the sole responsible party for meeting PROGRAM requirements. CITY will furnish data, statements, records, information and reports to COUNTY as necessary for COUNTY to monitor, review and evaluate the performance of the PROGRAM and its components. COUNTY has the right to request the services of an outside agent to assist in any such evaluation. Such services will be paid for by COUNTY.

**SECTION 6.2 CONTRACT NON-COMPLIANCE.** If CITY fails to comply with any provision of this CONTRACT, COUNTY has the right to terminate this CONTRACT or to require corrective action to enforce compliance with such provision. Such enforcement authority is pursuant to these CONTRACT terms and in accordance with the provisions of 24 CFR 85.43. Examples of non-compliance include but are not limited to:



- a. If SUBRECIPIENT (with or without knowledge) has made any material misrepresentation of any nature with respect to any information or data furnished to COUNTY in connection with the PROGRAM.
- b. If there is pending litigation with respect to the performance by CITY of any of its duties or obligations under this CONTRACT, which may materially jeopardize or adversely affect the undertaking of or the carrying out of the PROGRAM. The CITY and COUNTY may negotiate a reinstatement of this CONTRACT following termination or conclusion of such litigation.
- c. If CITY has taken any action pertaining or related to the PROGRAM or this CONTRACT, which action required COUNTY approval, and such approval was not obtained before the action was taken.
- d. If CITY is in default under any provision of this CONTRACT.
- e. If CITY makes illegal use of CDBG Funds.
- f. If SUBRECIPIENT submits to COUNTY any report which is incorrect or incomplete in any material respect.
- g. If CITY fails to meet all provisions of the COUNTY CDBG Reallocation Guidelines or the Joint Powers Agreement currently in full force and effect between the parties hereto.

**SECTION 6.3. Corrective Action Procedure.** COUNTY, in its absolute discretion and in lieu of immediately terminating this CONTRACT, upon occurrence or discovery of noncompliance by CITY pursuant to this CONTRACT, may give CITY notice of COUNTY'S intention to consider corrective action to enforce compliance utilizing the Corrective Action Procedure outlined below. Such notice will indicate the nature of the non-compliance and the procedure whereby CITY will have the opportunity to participate in formulating any corrective action recommendation. The Corrective Action Procedure contemplated herein is as follows:

1. COUNTY OSH Program Manager and CITY Manager will negotiate a time frame and course of action for correcting the non-compliance;
2. CITY will provide COUNTY with a written plan and time frame for correcting the non-compliance issue(s), subject to COUNTY approval. Such plan must be submitted by CITY to COUNTY within thirty (30) days of the initial non-compliance meeting between CITY and COUNTY;
3. CITY must initiate the corrective action procedure within sixty (60) days of the initial non-compliance meeting between the COUNTY OSH Program Manager and the CITY Coordinator (COUNTY, at its sole discretion, may extend this timeline for extenuating circumstances);
4. COUNTY will have the right to require the presence of CITY officers at any hearing or meeting called for the purpose of considering corrective action;
5. CITY has the right to appeal all findings of non-compliance, and subsequent corrective action, with both the COUNTY Board of Supervisors and HUD; and,
6. County reserves the right to seek any and all other remedies (equitable or other) available to it under the law.

In the event that CITY does not implement the corrective action recommendations in accordance with the corrective action timetable as approved by COUNTY, COUNTY may suspend payments hereunder, terminate this CONTRACT and/or exercise any other right or remedy available to it under the law.

## **SECTION 7. TERMINATION**

**SECTION 7.1 Termination for Cause.** COUNTY may terminate this CONTRACT by providing written notice to SUBRECIPIENT for any of the following reasons:

- a. Uncorrected CONTRACT non-compliance as defined in Section 6.2; SUBRECIPIENT is in bankruptcy or receivership; a member of the SUBRECIPIENT'S Board of Directors or the Executive Director is

found to have committed fraud or; there is reliable evidence that SUBRECIPIENT is unable to perform the PROGRAM as described in the attached Exhibits. The date of termination will be as specified in the notice.

- b. If CITY is in bankruptcy or receivership;
- c. If the CITY or a member of CITY'S Executive Management staff is found to have committed fraud in connection with or related to the PROGRAM;
- d. If the COUNTY determines or has reason to believe that there is reliable evidence that CITY is unable to effectively operate the PROGRAM or operate the PROGRAM in accordance with all requirements and obligations; or
- e. If CITY is in violation of any material term or condition of this CONTRACT.

**SECTION 7.2 Termination for Convenience.** In addition to the COUNTY'S right to terminate for cause set forth in Section 7.1, COUNTY may suspend or terminate this CONTRACT for any reason by giving thirty (30) days prior written notice to the other party. Upon receipt of such notice, performance of the services hereunder will be immediately discontinued. In the event that this CONTRACT is terminated, SUBRECIPIENT may be required to return funds according to HUD regulations. Upon termination of this CONTRACT, SUBRECIPIENT must immediately provide COUNTY access to all documents, records, payroll, minutes of meetings, correspondence and all other data pertaining to the CDBG FUNDS granted to SUBRECIPIENT pursuant to this CONTRACT.

- a. Upon termination, CITY will:
  - 1. If termination is for convenience, be reimbursed for all documented allowable costs and expenses incurred in connection with the PROGRAM up to the date of such termination. COUNTY shall be obligated to compensate CITY only for allowable costs and expenses as determined by an audit or other monitoring method;
  - 2. Turn over to COUNTY immediately any and all copies of studies, reports and other data, whether or not completed, prepared by CITY or its subcontractors, if any, in connection with this CONTRACT. Such materials shall become property of COUNTY. CITY, however, shall not be liable to COUNTY for COUNTY'S use of incomplete materials or for COUNTY'S use of completed documents if used for reasons not otherwise provided for or contemplated under the terms of this CONTRACT; and
  - 3. Transfer to the COUNTY any CDBG Funds on hand and any accounts receivable attributable to the use of the CDBG Funds. All assets acquired with the CDBG Funds shall be returned to the COUNTY unless otherwise negotiated by separate contract per the provisions of the COUNTY CDBG REALLOCATION GUIDELINES.
- b. Upon termination of this CONTRACT, CITY will immediately provide COUNTY access to all documents, records, payroll, minutes of meetings, correspondence, and all other data pertaining to the CDBG Funds.

## **SECTION 8. PURCHASING REAL OR PERSONAL PROPERTY**

**SECTION 8.1** SUBRECIPIENT will comply with all applicable Federal Regulations as detailed by 24 CFR Part 570, Subpart J, i.e. 570.500 (Definitions), 570.503 (Agreements with SUBRECIPIENTS), 570.504 (Program Income), and 570.505 (Use of Real Property), with regards to the use and disposal of Real or Personal Property purchased in whole, or in part, with CDBG FUNDS.

**SECTION 8.2 Grants.** If a grant is provided for the acquisition of real property, SUBRECIPIENT will continually operate its PROGRAM for a minimum period of **five (5) years** from the effective date of this CONTRACT. This obligation will survive the term of this CONTRACT, the assignment or assumption of this CONTRACT and the sale of the property prior to expiration of the obligation period as set forth in this paragraph. If this obligation is not fully met, SUBRECIPIENT may be required to reimburse the COUNTY. The COUNTY may consider, but will not be limited by, the following factors in calculating the reimbursement obligation: initial

grant sum, the duration of the initial contractual obligation to operate the PROGRAM versus the actual duration of operation, and the appreciated value.

**SECTION 8.3 Security Document.** As a condition precedent to COUNTY granting funds for the purchase of real property or an option to purchase real property, CITY will prepare and require its subrecipient(s) to execute a Loan Agreement, Promissory Note, Deed of Trust and such other contracts restricting the use of said real property for purposes consistent with this CONTRACT and HUD and CDBG requirements.

**SECTION 9. RELOCATION, ACQUISITION, AND DISPLACEMENT.** CITY agrees to comply with 24 CFR 570.606 and all other applicable laws and regulations relating to the acquisition and disposition of all real property utilizing CDBG funds, and to the displacement of persons, businesses, and non-profit organizations as a direct or indirect result of any acquisition or disposition of real property utilizing or supported with the use of CDBG funds. CITY agrees to comply with all applicable state and federal laws, County ordinances, resolutions and policies concerning or related to the displacement of individuals from their residences or homes.

**SECTION 10. PROGRAM INCOME.** Income generated from activities carried out with CDBG Funds is Program Income and shall be regulated by all provisions of Title 24 CFR 570 Subpart J “Grant Administration,” 570.503 “Agreements with Subrecipients,” and 570.504 “Program Income.” In addition, all provisions of the COUNTY REALLOCATION GUIDELINES apply to this CONTRACT. CITY must quarterly report all program income generated by activities carried out with CDBG funds made available under this CONTRACT. By way of further limitations, CITY may use such income during the CONTRACT term for activities permitted by this CONTRACT and shall reduce requests for additional funds by the amount of any such Program Income balances on hand. All unused Program Income will be returned to the COUNTY at the end of the CONTRACT term with the exception of rehabilitation loan payments.

**SECTION 11. INDEPENDENT CONTRACTOR**

**SECTION 11.1.** This is a CONTRACT by and between independent contractors and is not intended and will not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association between SUBRECIPIENT and COUNTY. SUBRECIPIENT, including its officers, employees, agents or independent contractors or subcontractors, shall not have any claim under this Contract or otherwise against COUNTY for any Social Security, Worker’s Compensation, or employee benefits extended to employees of COUNTY. If any obligation is performed for or on behalf of SUBRECIPIENT through a contractor or subcontractor, SUBRECIPIENT will remain fully responsible for the performance of all obligations under this Contract and SUBRECIPIENT will be solely responsible for all payments due to its contractors and subcontractors. No contract, subcontract or other agreement entered into by SUBRECIPIENT with any third party in connection with this CONTRACT will provide for any indemnity, guarantee or assumption of liability by, or other obligation of, County with respect to such arrangement. No contractor or subcontractor will be deemed a third party beneficiary for any purposes under or to this AGREEMENT.

**SECTION 12. ASSIGNABILITY – THIRD PARTY CONTRACTORS**

**SECTION 12.1** None of the work or services to be performed hereunder will be assigned, delegated or subcontracted to third parties without the prior written approval of COUNTY. Copies of all third party contracts shall be submitted to COUNTY at least ten days prior to the proposed effective date. In the event COUNTY approves of any such assignment, delegation or sub-contract, the subcontractors, assignees or delegates shall be deemed to be employees of SUBRECIPIENT, and SUBRECIPIENT will be responsible for their performance and any liabilities attaching to their actions or omissions.

**SECTION 12.2** This CONTRACT may not be assumed nor assigned to another subrecipient, person, partnership or any other entity without the prior written approval of COUNTY.

**SECTION 13. DISCLOSURE OF CONFIDENTIAL CLIENT INFORMATION**

**SECTION 13.1** COUNTY AND SUBRECIPIENT agree to maintain the confidentiality of any information regarding existing, former or prospective applicants for services offered by the PROGRAM pursuant to this CONTRACT or their immediate families which may be obtained through application forms, interviews, tests, reports from public agencies or counselors, or any other source. Without the written permission of the applicant, such information may be divulged only if permitted by law as necessary for purposes related to the performance or evaluation of the services and work to be provided pursuant to or under this CONTRACT, and then only to persons having responsibilities under this CONTRACT, including those furnishing services under the PROGRAM through approved subcontracts.

**SECTION 14. HOLD HARMLESS**

**SECTION 14.1** In addition to the indemnity obligations set forth in Exhibit F, "Insurance Requirements," SUBRECIPIENT warrants and represents that it shall indemnify, save, defend and hold harmless the COUNTY, its employees, agents, and officials, members of boards and commissions, from, for and against any and all claims, costs, settlements, litigation expenses, attorney's fees and court costs, allegations, direct and indirect damages, injuries, illnesses, deaths, actions, suits, charges and judgments whatsoever, arising out of or relating to (a) SUBRECIPIENT's negligent or intentional acts or omissions; (b) SUBRECIPIENT'S breach or violation of any term or condition of this CONTRACT; (c) SUBRECIPIENT's failure to comply with any applicable law, decrees, ordinance, code, regulations or other standard, including but not limited to as set forth in Exhibit D, "Assurances," attached herein and incorporated by reference.

**SECTION 15. WAIVER OF RIGHTS AND REMEDIES**

**SECTION 15.1** In no event will any payment by COUNTY constitute or be construed to be a waiver by COUNTY of any breach or violation of the requirements, obligations, conditions, covenants or other provisions of this CONTRACT or any default which may then exist on the part of CITY, and the making of any such payment while any such breach, violation or default exists will in no way impair or prejudice any right or remedy available to COUNTY with respect to such breach, violation or default. In no event will payment to CITY by COUNTY in any way constitute a waiver by COUNTY of its rights to recover from CITY the amount of money paid to SUBRECIPIENT on any item which is not eligible for payment under or for the PROGRAM or this CONTRACT or any other right. No delay or omission by COUNTY to exercise any right occurring upon any noncompliance or default by CITY with respect to any of the terms of this Contract shall impair any such right or power or be construed to be a waiver thereof. A waiver by COUNTY of any of the covenants, conditions or agreements to be performed by CITY shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition or agreement herein contained.

**SECTION 16. COMPLIANCE WITH ALL LAWS, INCLUDING NONDISCRIMINATION, EQUAL OPPORTUNITY, AND WAGE THEFT PREVENTION**

a. Compliance with All Laws. CITY shall comply with all applicable Federal, State, and local laws, regulations, rules, and policies (collectively, "Laws"), including but not limited to the non-discrimination, equal opportunity, and wage and hour Laws referenced in the paragraphs below.

b. Compliance with Non-Discrimination and Equal Opportunity Laws: CITY shall comply with all applicable Laws concerning nondiscrimination and equal opportunity in employment and contracting, including but not limited to the following: Santa Clara County's policies for Contractors on nondiscrimination and equal

opportunity; Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973 (Sections 503 and 504); the Equal Pay Act of 1963; California Fair Employment and Housing Act (Gov. Code § 12900 et seq.); California Labor Code sections 1101, 1102, and 1197.5; and the Genetic Information Nondiscrimination Act of 2008. In addition to the foregoing, CITY shall not discriminate against any subconsultant, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political belief, organizational affiliation, or marital status in the recruitment, selection for training (including but not limited to apprenticeship), hiring, employment, assignment, promotion, layoff, rates of pay or other forms of compensation. Nor shall CITY discriminate in the provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

c. Compliance with Wage and Hour Laws: CITY shall comply with all applicable wage and hour Laws, which may include but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and, if applicable, any local minimum wage, prevailing wage, or living wage Laws.

d. Definitions: For purposes of this Section 14, the following definitions shall apply. A “Final Judgment” shall mean a judgment, decision, determination, or order (a) which is issued by a court of law, an investigatory government agency authorized by law to enforce an applicable Law, an arbiter, or arbitration panel and (b) for which all appeals have been exhausted or the time period to appeal has expired. For pay equity Laws, relevant investigatory government agencies include the federal Equal Employment Opportunity Commission, the California Division of Labor Standards Enforcement, and the California Department of Fair Employment and Housing. Violation of a pay equity Law shall mean unlawful discrimination in compensation on the basis of an individual’s sex, gender, gender identity, gender expression, sexual orientation, race, color, ethnicity, or national origin under Title VII of the Civil Rights Act of 1964 as amended, the Equal Pay Act of 1963, California Fair Employment and Housing Act, or California Labor Code section 1197.5, as applicable. For wage and hour Laws, relevant investigatory government agencies include the federal Department of Labor, the California Division of Labor Standards Enforcement, and the City of San Jose’s Office of Equality Assurance.

e. Prior Judgments, Decisions or Orders against CITY: By signing this Agreement, CITY affirms that it has disclosed any final judgments that (A) were issued in the five years prior to executing this Agreement by a court, an investigatory government agency, arbiter, or arbitration panel and (B) found that CITY violated an applicable wage and hour law or pay equity law. CITY further affirms that it has satisfied and complied with – or has reached Agreement with the County regarding the manner in which it will satisfy – any such final judgments.

f. Violations of Wage and Hour Laws or Pay Equity Laws During Term of Contract: If at any time during the term of this Agreement, CITY receives a Final Judgment rendered against it for violation of an applicable wage and hour Law or pay equity Law, then CITY shall promptly satisfy and comply with any such Final Judgment. CITY shall inform the Office of the County Executive-Office of Countywide Contracting Management (OCCM) of any relevant Final Judgment against it within 30 days of the Final Judgment becoming final or of learning of the Final Judgment, whichever is later. CITY shall also provide any documentary evidence of compliance with the Final Judgment within 5 days of satisfying the Final Judgment. Any notice required by this paragraph shall be addressed to the Office of the County Executive-OCCM at 70 W. Hedding Street, East Wing, 11th Floor, San José, CA 95110. Notice provisions in this paragraph are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the Office of the County Executive-OCCM satisfies the notice requirements in this paragraph.

g. Access to Records Concerning Compliance with Pay Equity Laws: In addition to and notwithstanding any other provision of this Agreement concerning access to CITY’s records, CITY shall permit the County and/or its authorized representatives to audit and review records related to compliance with applicable pay equity Laws. Upon the County’s request, CITY shall provide the County with access to any and all

facilities and records, including but not limited to financial and employee records, that are related to the purpose of this Subsection H, except where prohibited by federal or state laws, regulations or rules. County's access to such records and facilities shall be permitted at any time during CITY's normal business hours upon no less than 10 business days' advance notice.

h. Pay Equity Notification: CITY shall (1) at least once in the first year of this Agreement and annually thereafter, provide each of its employees working in California and each person applying to CITY for a job in California (collectively, "Employees and Job Applicants") with an electronic or paper copy of all applicable pay equity Laws or (2) throughout the term of this Agreement, continuously post an electronic copy of all applicable pay equity Laws in conspicuous places accessible to all of CITY's Employees and Job Applicants.

i. Material Breach: Failure to comply with any part of this Section 14 shall constitute a material breach of this Agreement. In the event of such a breach, the County may, in its discretion, exercise any or all remedies available under this Agreement and at law. County may, among other things, take any or all of the following actions:

(i) Suspend or terminate any or all parts of this Agreement.

(ii) Withhold payment to CITY until full satisfaction of a Final Judgment concerning violation of inapplicable wage and hour Law or pay equity Law.

(iii) Offer CITY an opportunity to cure the breach.

j. Subcontractors: CITY shall impose all of the requirements set forth in this Section 14 on any subcontractors permitted to perform work under this Agreement. This includes ensuring that any subcontractor receiving a Final Judgment for violation of an applicable Law promptly satisfies and complies with such Final Judgment.

This non-discrimination provision must be included in CITY'S contracts with sub-contractors and vendors when utilizing (directly or indirectly) the CDBG FUNDS disbursed for the PROGRAM.

**SECTION 17. AMENDMENTS.** Amendments to the terms or conditions of this CONTRACT must be requested in writing by an authorized representative of the party desiring amendments, and any amendment will be effective only upon the mutual agreement in writing of the parties hereto by and through the parties authorized representatives. Amendments will not invalidate this CONTRACT nor relieve or release the COUNTY or the CITY from its obligations under this CONTRACT.

**SECTION 18. TRANSFER OF FUNDS.** During the CONTRACT term, CITY may choose to transfer funds within the PROGRAM described in Exhibits A through F. Fund transfers exceeding \$30,000 as well as new projects or activities added to CITY's PROGRAM, require City Council and County Board of Supervisors approval. New projects must be the same or similar in kind of the activity that was originally approved by the Board of Supervisors and City Council.

**SECTION 19. INTEGRATED DOCUMENT- JOINT POWERS AGREEMENT.** This CONTRACT, in conjunction with the Santa Clara County CDBG Joint Powers Agreement (JPA), contains the entire agreement between COUNTY and CITY with respect to the subject matter hereof. No written or oral agreements, other than the Santa Clara County CDBG Joint Powers Agreement, with any officer, agent or employee of COUNTY prior to execution of this Contract will affect or modify any of the terms or obligations contained in any documents comprising this Contract.

**SECTION 20. NON-SMOKING POLICY.** Contractor and its employees, agents and subcontractors shall comply with the County's No Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus

and all County-owned and operated health facilities; (2) within thirty (30) feet surrounding County-owned buildings and leased buildings where the County is the sole occupant; and (3) in all County vehicles.

**SECTION 21. FOOD AND BEVERAGE STANDARDS.**

Except in the event of an emergency or medical necessity, the following nutritional standards shall apply to any foods and/or beverages purchased by CITY with County funds for County-sponsored meetings or events.

If food is to be provided, healthier food options shall be offered. “Healthier food options” include (1) fruits, vegetables, whole grains, and low fat and low calorie foods; (2) minimally processed foods without added sugar and with low sodium; (3) foods prepared using healthy cooking techniques; and (4) foods with less than 0.5 grams of trans fat per serving. Whenever possible, CITY shall (1) offer seasonal and local produce; (2) serve fruit instead of sugary, high calorie desserts; (3) attempt to accommodate special, dietary and cultural needs; and (4) post nutritional information and/or a list of ingredients for items served. If meals are to be provided, a vegetarian option shall be provided, and the CITY should consider providing a vegan option.

If pre-packaged snack foods are provided, the items shall contain: (1) no more than 35% of calories from fat, unless the snack food items consist solely of nuts or seeds; (2) no more than 10% of calories from saturated fat; (3) zero trans-fat; (4) no more than 35% of total weight from sugar and caloric sweeteners, except for fruits and vegetables with no added sweeteners or fats; and (5) no more than 360 mg of sodium per serving.

If beverages are to be provided, beverages that meet the County’s nutritional criteria are (1) water with no caloric sweeteners; (2) unsweetened coffee or tea, provided that sugar and sugar substitutes may be provided as condiments; (3) unsweetened, unflavored, reduced fat (either nonfat or 1% low fat) dairy milk; (4) plant-derived milk (e.g., soy milk, rice milk, and almond milk) with no more than 130 calories per 8 ounce serving; (5) 100% fruit or vegetable juice (limited to a maximum of 8 ounces per container); and (6) other low-calorie beverages (including tea and/or diet soda) that do not exceed 40 calories per 8 ounce serving. Sugar-sweetened beverages shall not be provided.

**SECTION 22. MISCELLANEOUS**

**SECTION 22.1** The captions and section headings used in this CONTRACT are for convenience of reference only, and the words contained herein will, in no way, be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this CONTRACT.

**SECTION 22.2 All Exhibits** attached hereto and referred to in this CONTRACT are incorporated herein by this reference as if set forth fully herein. **Exhibits are as follows:**

- Exhibit “A” (CDBG Scope of Services, Performance Outcomes and Measurements, and Budget),
- Exhibit “A1” (Income Definitions/Requirements)
- Exhibit “A2” (FY20 Income Limits)
- Exhibit “A3” (Exception Percentage Area Benefit)
- Exhibit “B” (Payments to CITY),
- Exhibit “C” (General Block Grant Conditions),
- Exhibit “D” (Assurances),
- Exhibit “E” (Declaration of Contractor),
- Exhibit “F” (Insurance Requirements).

**SECTION 22.3** Nothing contained herein is to be construed as an indemnification for any loss, damage, injury or death arising out of or caused, in whole or in part, by the County or its Board of Supervisors, officers,

executives, attorneys, employees, agents, representatives, contractors or subcontractors. Nothing contained herein shall be construed to, and nothing shall, obligate the County to provide any insurance for or on behalf of this Contract, the Program, the PROGRAM, SUBRECIPIENT, anyone, anything, any event, any use, any property, any action or inaction, or any reason or purpose.

**SECTION 22.4** The rights and remedies of the parties to this CONTRACT, whether pursuant to this CONTRACT or in accordance with law, shall be construed as cumulative, and the exercise of any single right or remedy shall constitute neither a bar to the exercise of nor the waiver of any other available right or remedy.

**SECTION 22.5** This CONTRACT may be executed in several counterparts, and all of such counterparts so executed together shall be deemed to constitute one and the same agreement, and each such counterpart shall be deemed to be an original. Facsimile or electronic signatures shall have the same legal effect as original or manual signatures if followed by mailing of a fully executed original to both parties.

**SECTION 22.6** 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.

**SECTION 22.7** This CONTRACT shall not be construed more strongly against either party regardless of who is more responsible for its preparation.

**SECTION 22.8** This CONTRACT, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this CONTRACT or the transaction(s) contemplated by it, shall be governed by, construed and enforced in accordance with the law of the State of California (excluding any conflict of law’s provisions that would refer to and apply the substantive laws of another jurisdiction). Any suit or proceeding relating to this CONTRACT, including arbitration proceedings, shall be brought only in Santa Clara County, California. EACH OF THE PARTIES CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS, STATE AND FEDERAL, LOCATED IN SANTA CLARA COUNTY, CALIFORNIA.

**SECTION 22.9** Those Sections and provisions that by their nature should survive termination, cancellation or expiration of this CONTRACT shall so survive, including but not limited to Sections 3 and Section 5; and, Sections 6 through and including Section 20.

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**SECTION 22.10** The persons signing below are duly authorized to execute this CONTRACT.

IN WITNESS WHEREOF, the parties have executed this as indicated below.

**TOWN OF LOS GATOS**

**COUNTY OF SANTA CLARA:**

By: \_\_\_\_\_  
Laurel Prevetti, Town Manager

By: \_\_\_\_\_  
Jeffrey V. Smith, County Executive

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Wendy Wood, CMC, City Clerk

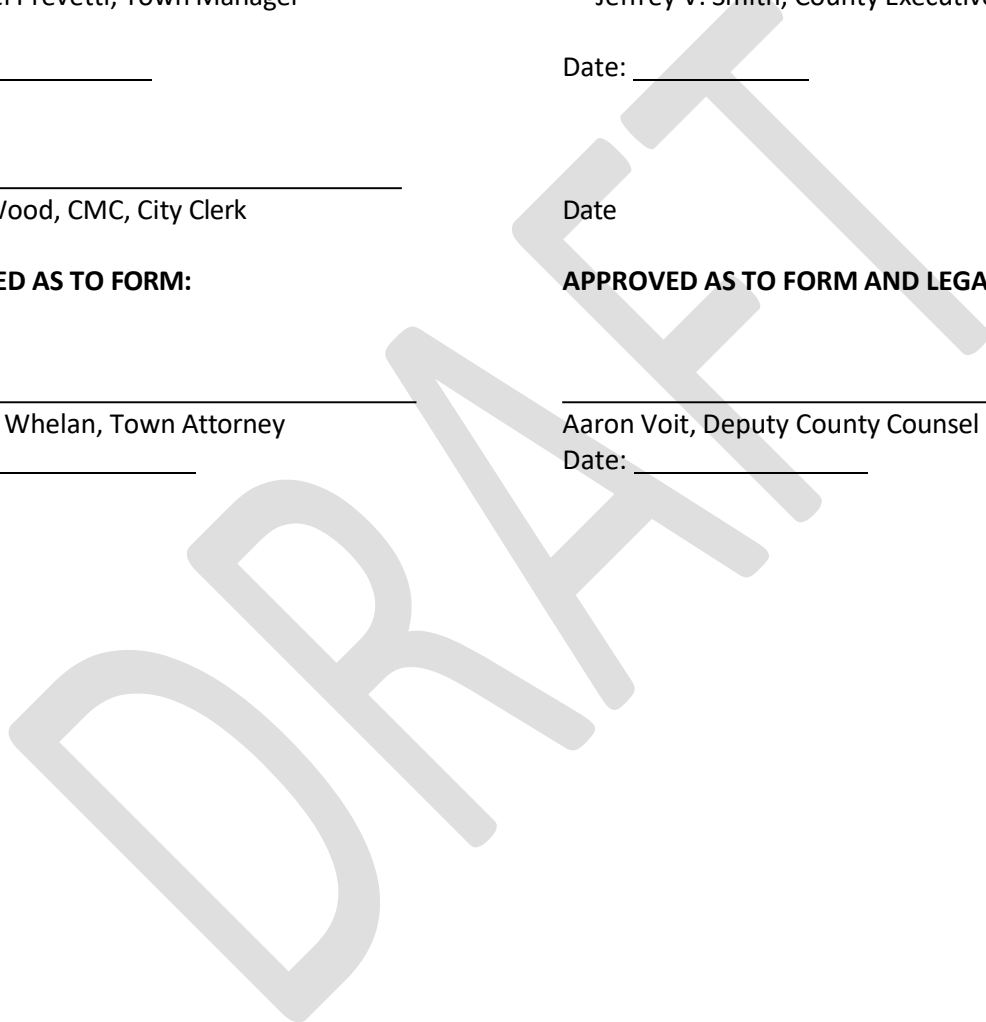
Date

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM AND LEGALITY:**

\_\_\_\_\_  
Gabrielle Whelan, Town Attorney  
Date: \_\_\_\_\_

\_\_\_\_\_  
Aaron Voit, Deputy County Counsel  
Date: \_\_\_\_\_



**EXHIBIT A  
SCOPE OF SERVICES,  
OUTCOMES MEASURES AND BUDGET  
FY 2023**

Contract No. LG-23-01

Grant Amount:

**\$140,000**

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**1. SUBRECIPIENT INFORMATION:**

**Subrecipient Name**

Town of Los Gatos

**Program Name**

Adult Recreation Center – First Floor Restrooms

**Program Contact**

Dan Keller

**Phone**

408-395-5310

**Email**

[dkeller@losgatoscagov](mailto:dkeller@losgatoscagov)

**2. LOCATION OF PROGRAM:** Unless otherwise indicated, the Grant Services specified will be offered at the following location(s):

*Site Name and Address:*

208 E. Main Street, Town of Los Gatos, California

**3. PROGRAM DESCRIPTION:** The primary purpose of the Program is to:

Provide a fully accessible restroom and parking lot pathway to building entry that is fully ADA compliant in the Los Gatos Saratoga Recreation (LGSR) Adult Recreation Center. This will include construction of a gender-neutral restroom in accordance with ADA specifications. In addition, improvements to the parking lot will be implemented, including four accessible parking stalls and a concrete pathway that leads into the entry of the building. All aspects of this project which will follow ADA requirements in design and construction.

**4. SERVICE AREA:** Check the areas where the services will be provided:

Town of Los Gatos

**5. PROJECT FUNDING & ELIGIBLE ACTIVITY:**

Improvement of other eligible community facilities

**6. INCOME ELIGIBILITY:** Eligible clients under this Contract shall be Extremely Low, Very Low, and/or Low income individuals and/or families of all ethnic groups.

- a. **Extremely low-income** which is defined as household income that is 30% or lower of the HUD median income for the San Jose Metropolitan Statistical Area (MSA),
- b. **Very low-income** which is defined as household income that exceeds 30% but does not exceed 50% of the HUD median income for the San Jose MSA, and
- c. **Low income** is defined as household income at or below 80% of median income for the San Jose MSA.

7. URBAN COUNTY CONSOLIDATED PLAN ACTIVITY: (check one)

- Affordable Housing (Create or Maintain)
- Homelessness (Activities to end homelessness)
- Community Services
- Strengthen Neighborhoods (Capital Improvements or Public Facilities)
- Fair Housing Services

8. PERFORMANCE MEASUREMENT

The U.S. Department of Housing and Urban Development (HUD) requires a performance measurement system to better capture data for the activities that are undertaken with CDBG funding. For each proposed activity, an objective, outcome, and performance indicator must be identified.

a. Primary Objectives: (Select One)

- Create Suitable Living Environment** – this objective relates to activities that are designed to benefit communities, families, or individuals by addressing issues in their living environment.

b. Primary Outcome (check one)

- Availability/Accessibility** (Activity that makes services, infrastructure, housing, and or shelter available and accessible.)

9. SPECIFIC OUTCOME INDICATORS

1. Number of Unduplicated to be assisted by this Program:

a. Of the Total Assisted, how many will

Outcome Indicators	Number of Beneficiaries
Have new or continued access to this service or benefit.	<b>29,962</b>
Have improved access to this service of benefit	
Receive a service or benefit that is no longer substandard	

10. ACCOMPLISHMENTS: Estimate the number of unduplicated Urban County persons/households to be served by this capital improvement project during FY23: 29,962

Please include proposed accomplishments for this project that will be reported to the U.S. Department of Housing & Urban Development (HUD) once the project is complete (maximum of 4000 characters).

A gender-neutral restroom will be designed and constructed in the LGSR Adult Recreation Center. In addition, improvements to the Center’s parking lot will be implemented. These improvements include four accessible parking stalls and a concrete pathway that leads into the accessible entry of the building. All aspects of this project will be fully ADA compliant in design and construction. This Adult Recreation Center has approximately 60,00 visits annually from participants, some visits are duplicated. The improvements implemented will ensure accessibility to participants that may have a physical disability and will provide a new restroom space with new fixtures and finishes. This will not only provide full access, it will add to the attraction of the facility for participants and attendance from the general public.

**11. BUDGET**

FY22-23 BUDGET CATEGORY	CDBG FUNDS	PROPOSED AMOUNTS OF OTHER PROGRAM FUNDS (if any)	TOTAL PROGRAM COSTS
<b>DIRECT COSTS:</b>			
Architect/Engineering	\$30,000		
Construction	\$90,000		
Right-of-way Dedication			
Project Management			
Construction Management	20,000		
QC Testing			
<b>TOTAL:</b>	<b>\$140,000</b>		<b>\$140,000</b>

**12. PROJECT SCHEDULE**

Milestone	Date
1.	
2.	
3.	
4.	

**13. REPORTING REQUIREMENTS**

**Beneficiary Data.** City shall be required to submit beneficiary data for this project. City shall report the CDBG Unduplicated Participants/Beneficiaries, Demographic Information, Income Levels (Extremely-low, low, moderate, non-low/moderate) and the and how the activities being provided under this grant contribute to meeting performance measures stated in the contract.

# DRAFT

## EXHIBIT AI

### INCOME DEFINITIONS/REQUIREMENTS

***A low- and moderate- (L/M) income person*** is defined as a member of a family having an income equal to or less than the Section 8 Housing Assistance Payments Program low-income limits established by HUD applicable to the size of the person's family. A family is defined as all persons living in the same household who are related by blood, marriage, or adoption. An individual living in a housing unit that contains no other person(s) related to him/her is considered to be a one person family for this purpose. Adult children who continue to live at home with their parent(s) are considered to be part of the family for this purpose and their income must be counted in determining the total family income. A dependent child who is living outside of the home (e.g., students living in a dormitory or other student housing) is considered for these purposes to be part of the family upon which he/she is dependent, even though he/she is living in another housing unit.

***A low- and moderate-(L/M) income household*** is defined as a household in which the total income of all of the household members is equal to or less than the Section 8 Housing Assistance Payments Program low-income limit established by HUD for an equivalent sized family. A household is defined as all persons occupying the same housing unit, regardless of their relationship to each other. The occupants could consist of a single family, two or more families living together, or any other group of related or unrelated persons who share living arrangements.

#### ***Persons vs Households***

It is important to note that, for all but one of the subcategories under this national objective, the test of meeting the objective of Benefit to L/M is to be met based on L/M persons. Only with the subcategory of L/M Housing must the test be met based on L/M households.

There are reasons for this distinction. First, the statute requires that the focus be on the occupants of a CDBG-assisted housing unit when determining whether the national objective of benefit to L/M Income persons can be met. Secondly, there are two underlying assumptions in the CDBG regulations concerning this issue: 1) that all persons who reside in a housing unit that has been provided or improved with CDBG assistance will benefit from that housing unit; and 2) that the resources of all occupants could be brought to bear with respect to paying for the rental, improvement or purchase of the unit.

For housing units receiving CDBG assistance which are occupied by persons of the same family, totaling the income of all occupants of a unit easily determines whether or not the family is a L/M Income family. However, CDBG-assisted housing units can be occupied by persons who are not related to each other in the traditional family sense. Thus, there needs to be a way to determine whether the beneficiaries of such an assisted housing unit should be considered to be L/M Income for purposes of meeting the CDBG national objective. In addressing this problem, the regulations provide first, that the income of all persons occupying a CDBG-assisted housing unit must be counted without regard to their familial relationships, and secondly, by treating them (for this purpose only) as though they were all of the same family. If the "household/family" income qualifies it as L/M Income, then the assisted housing unit would be considered to be occupied by a L/M Income household.

**LIMITED CLIENTELE**

A *L/M income limited clientele activity* is an activity which provides benefits to a specific group of persons rather than everyone in a general area. It may benefit particular persons without regard to the area in which they reside, or it may be an activity which provides benefit on an area basis but only to a specific group of persons who reside in the area. In either case, at least 51% of the beneficiaries of the activity must be L/M income persons. It should be noted, however, that because of certain statutory limitations, the regulations preclude the following kinds of activities from qualifying under this subcategory: To qualify under this subcategory, a limited clientele activity must exclusively benefit a clientele who are generally *presumed by HUD to be principally L/M income persons, which is 100% of beneficiaries are L/M Income.*

The following groups are currently presumed by HUD to be made up principally of L/M income persons:

- abused children,
- elderly persons (62+),
- battered spouses,
- homeless persons,
- adults meeting Bureau of Census' definition of severely disabled persons,
- illiterate adults,
- persons living with AIDS, and
- migrant farm workers.

**PUBLIC SERVICE ACTIVITIES INCOME DEFINITIONS**

For the purpose of determining whether a family or household is low- and moderate-income under this Agreement, Annual Income is defined using the Section 8 Housing Assistance Payments program definition.

**A. Income Determination**

Annual income as defined at 24 CFR Part 5.6 (except when determining the income of a homeowner for an owner-occupied rehabilitation project, the value of the homeowner's principal residence may be excluded from the calculation of Net Family Assets, as defined in 24 CFR Part 5.6); or § 5.609 Annual income.

**B. Annual Income** means all amounts, monetary or not, which:

1. Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or
2. Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and
3. Which are not specifically excluded in paragraph C of this section.
4. Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

**C. Annual income includes, but is not limited to:**

1. The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;
2. The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;

3. Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (8)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;

4. The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount of this section);

5. Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in paragraph (c )(3) of this section);

**Stated Income, Self-certification, or Intake forms** for purposes of this Agreement must require a copy of at least one or more income verification document/s be collected by the Subrecipient in order to verify a client's or household's annual income and saved in the client/s file. The County, will monitor a minimum of 20% of each Subrecipients Stated Income, Self-certification, or Intake forms throughout the program year.

**INCOME WORKSHEET EXAMPLE** (Annual Income of Applicants and other Household Members over the age of 18)

Category (Do not complete, for example use)	Applicant 1	Applicant 2	Other Household Member 1
<b>One or more documents verifying income from the following Income categories:</b>			
<b>1) Gross Regular Earned Income from Employment (Wages, tips, salaries)</b>			
2) Net Income from self-owned business or profession:			
3) Income Received from Social Security, Death, Disability, Private Disability, and/or Retirement and Pension Fund payments:			
<b>4) Unemployment, Workers Compensation, Severance and other pay received in-lieu of payments for earnings:</b>			
<b>Include the following various Income sources into the total Income:</b>			
Alimony, child support, gifts, other contributions:			
Other sources of income, non-documented income earned or received, including income from rental properties:			
Armed Forces Income:			
Interest and Dividend income received from trusts, royalties, and investments including stocks and bonds:			
Public assistance and food stamp payments:			
<b>TOTAL:</b>	\$	\$	\$

**EXHIBIT A2**

HUD Exception Grantee's Percentage for Low-and-Moderate-Income Area (LMA) Benefit  
FY 2023

The Community Block Grant Development (CDBG) program requires that each CDBG-funded activity must either principally benefit low and moderate income persons, aid in the prevention or elimination of slums or blight, or meet a community development need having a particular urgency. With respect to activities that benefit all the residents of a given area, at least 51% of the area's residents must be low and moderate income.

Some CDBG assisted activities, such as parks, neighborhoods, facilities, community centers and streets, serve an identified geographic area. These activities generally meet the low- and moderate-income principal benefit requirement if 51 percent of the residents in the activity's service area are low and moderate income.

However, some communities have no or very few areas in which 51 percent of the residents are low and moderate income. For these grantees, the CDBG law authorizes an exception criterion in order for such grantees to be able to undertake area benefit activities. Specifically, section 105(c)(2)(A)(ii) of the Housing and Community Development Act of 1974, as amended, states that an activity shall be considered to principally benefit low and moderate income persons when "the area served by such activity is within the highest quartile of all areas within the jurisdiction of such city or county in terms of the degree of concentration of persons of low and moderate income." (See Exception Percent Table Below)

Section 105(c)(2)(A)(ii) is implemented in the CDBG regulations at 24 CFR 570.208(a)(1)(ii), which identifies the following methodology to calculate a grantee's "exception" threshold: all block groups within the grantee's jurisdiction in which people are residing are rank ordered from the highest percentage of low- and moderate-income persons to lowest. (For urban counties, the rank ordering covers the entire area of the county, rather than being done separately by participating units of government within the county.) The total number of block groups is divided by four. If the percentage of low- and moderate-income persons in the last block group in the top quartile is less than 51 percent, that percentage becomes the grantee's low- and moderate-income threshold for area benefit activities. NOTE: whenever the total number of block groups does not divide evenly by four, the block group that would be fractionally divided is included in the top quartile.

The table below reflects the CDBG "exception grantee for the County of Santa Clara, Urban County and the exception threshold for the Urban County based on the 2011-2015 American Community Survey (ACS). This percentage represents the minimum percentage of low- and moderate-income persons that must reside in the service area of an area benefit activity for the activity to be assisted with CDBG funds. The Urban County Exception Grantee threshold for FY 2021 L/M Area-basis exception percentage is: **45.43%**

American Community Survey 5-Year 2011-2015 Low and Moderate Income Summary Data (HUD FY21)

CDBG NAME	STATE	CDBG TYPE	LOW/MOD	LOW/MOD UNIV	LOW/MOD PCT	FY2021 EXCEPTION AREA PERCENTAGE
Santa Clara County	CA	Urban County	79,545	259,845	30.61%	<b>45.43%</b>



**EXHIBIT B  
PAYMENTS TO CITY**

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COUNTY agrees to pay SUBRECIPIENT for the performance of the services, work, and duties, subject to and performed in connection with this AGREEMENT, a sum of money not to exceed the amount set forth in this AGREEMENT. Such sum shall be paid by COUNTY to SUBRECIPIENT on a reimbursement basis for services actually performed by SUBRECIPIENT and for eligible costs actually incurred by and paid by, pursuant to this AGREEMENT, for the cost categories appearing in this section.

**SECTION 1. Payment Procedures.**

**A.** No sum shall be paid until COUNTY has received from SUBRECIPIENT the following:

1. Reimbursement Request (RR) or Expense Summary (ES) request for the PROGRAM on a quarterly basis, for approved invoices submitted pursuant to this CONTRACT. The RR form must be accompanied by a request for reimbursement on SUBRECIPIENT's letterhead. Requests for reimbursement will be made quarterly via the CityData Grants Management website at [www.Citydataservices.net](http://www.Citydataservices.net) and specify in detail the services performed by and the costs incurred by and paid by SUBRECIPIENT during the period for which payment is requested. Any Program Income received by the SUBRECIPIENT shall reduce total allowable payments by the same amount. "Program Income" is defined as income or earnings received by SUBRECIPIENT which are directly generated from the use of CDBG funds (as defined at 24 CFR 570.500(a)). It shall be reported by SUBRECIPIENT to COUNTY on a monthly basis. Any Program Income on hand when this Agreement expires or terminated or any Program Income received after this Agreement expires or terminates shall be promptly paid to COUNTY.

**B. Payment.** Payment to SUBRECIPIENT will be made within thirty (30) calendar days of receipt by COUNTY of all such required statements and supporting documents, including but not limited to, paid invoices, provided that the items on such statements and supporting data for which payment is requested can properly be paid under this Agreement, HUD regulations 2 CFR 200 applicable to the program, and the COUNTY-HUD Grant Agreement, as the same may from time to time be amended. In making such determination, COUNTY may rely upon the certification by SUBRECIPIENT that the items appearing on said statement and supporting data are eligible items for payment under this program and Agreement, and such determination by COUNTY shall in no way constitute a waiver by COUNTY of its right to recover from the amount of any money paid on any item which is not eligible for payment under the program and this Agreement. Payment will be delayed if the information provided to the COUNTY is missing or incomplete. COUNTY has the right to ask for additional documentation, which will assist in the determination of cost eligibility and is in accordance with HUD regulations as amended from time to time. In making such determination for payment, COUNTY may rely upon the certification by SUBRECIPIENT that the items appearing on said statement and supporting data are eligible items for payment under this program and Agreement, and such determination by COUNTY shall in no way constitute a waiver by COUNTY of its right to recover from the amount of any money paid toward any item which is not eligible for payment under the program and this Agreement.

**C. Disbursement.** The total amount of such payments to be made to SUBRECIPIENT shall be distributed in the following manner during the course of the PROGRAM.

1. Construction Costs. Total eligible payments made to SUBRECIPIENT's for time actually worked for all categories listed in EXHIBIT A entitled "CDBG Scope of Services, Performance Outcomes and Measurements, and Budget".
2. Audit. Eligible payments to an independent auditor to perform an audit in accordance with 2 CFR PART 200, Subpart F, if required. "Eligible," as used in this Agreement, means those costs, payments, and disbursements for activities for which community development grant moneys may be used pursuant to Section 570.201 of the Federal Rules and Regulations for the Implementation of Title I of the Housing and Community Development Acts of 1974 and 1977, as amended, (24 CFR 570) and all other applicable rules and regulations.
3. Classification of Costs. There is no universal rule for classifying certain costs as either direct or indirect F&A (Finance and Administration) under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Federal award or other final cost objective. Therefore, it is essential that each item of cost incurred for the same purpose be treated consistently in like circumstances either as a direct or an indirect F&A cost in order to avoid possible double-charging of Federal awards. Guidelines for determining direct and indirect (F&A) costs charged to Federal awards can be found in 2 CFR 200.412 – Classification of Costs.

## **SECTION 2. Budget Amendments.**

**A. Line Item.** Any amendments to a line item in the approved budget must receive prior written approval from the OSH. Requests for budget amendments shall be submitted via the CityData Grants Management website at [www.Citydataservices.net](http://www.Citydataservices.net).

**B. Reallocating of Program Funds.** The COUNTY shall review the monthly expenditures to ensure it has "timely performance" in accordance with the CDBG regulations 24 CFR 570.902 and to ensure the COUNTY is able to meet the timeliness test 60 days prior to the end of the program year, which is usually on or around April 30. On a monthly basis, COUNTY shall review the monthly expenditures, if any, for services performed and costs incurred by SUBRECIPIENT provided in this Exhibit. If such review reveals that the monthly expenditures in any such month for the PROGRAM as a whole or any cost category thereof are below the total amount allocated under this Agreement for the total PROGRAM or cost category thereof for such month, COUNTY may reallocate the amount of such under spending. In the case of under spending in a cost category, COUNTY may reallocate the unspent amount into another cost category of the PROGRAM. In the case of underspending in the PROGRAM as a whole, COUNTY may reallocate unspent amount to another community development PROGRAM. COUNTY shall, before reallocating, give SUBRECIPIENT ten (10) days' written notice of its intention to reallocate funds. Such notice shall include a copy of COUNTY's monthly expenditure review for the PROGRAM and statement of its reasons for such reallocation. COUNTY shall make its final determination with respect to reallocation only after SUBRECIPIENT has been given an opportunity to present its views and recommendations with respect to such contemplated reallocation. In no event, however, shall COUNTY be bound to accept SUBRECIPIENT's views or recommendations with respect to such contemplated reallocation. If the expenditures by SUBRECIPIENT in any month, for the PROGRAM or any cost category

thereof, exceed the total amount allocated to the PROGRAM or any cost category thereof, COUNTY may terminate non-salary expenditures for the PROGRAM for such period of time as is necessary to bring expenditures into conformance with this Agreement.

**C. Reallocation of Program Funds.** The DIRECTOR of the Office of Supportive Housing or his or her designated representative may, at the request of SUBRECIPIENT, approve reallocation of funds from any cost category or categories to any other cost category or categories at any time provided that: (1) there is no increase in the total amount specified in this Agreement, and (2) the goals and objectives set forth in Exhibit A are not negatively affected. Approval by the DIRECTOR of the Office of Supportive Housing or his or her designated representative of such reallocation of funds must be in writing. Any unexpended funds at the end of the term of the Agreement shall be retained by the COUNTY. Expenses incurred prior to July 1, 2020, are not eligible for reimbursement under this Agreement.

COUNTY agrees to pay SUBRECIPIENT for the performance of the services, work, and duties, subject to and performed in connection with this AGREEMENT, a sum of money not to exceed the amount set forth in this AGREEMENT. Such sum shall be paid by COUNTY to SUBRECIPIENT on a reimbursement basis for services actually performed by SUBRECIPIENT and for eligible costs actually incurred by and paid by, pursuant to this AGREEMENT, for the cost categories appearing in this section.

**EXHIBIT C  
GENERAL BLOCK GRANT CONDITIONS**

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**SECTION 1. GENERAL GRANT CONDITIONS**

- A. Definitions.** As used herein, "HUD" means United States Department of Housing and Urban Development. "COUNTY" means the Santa Clara County Urban County, which includes the unincorporated community within Santa Clara County in addition to seven small jurisdictions: Campbell, Los Altos, Los Altos Hills, Los Gatos, Monte Sereno, Morgan Hill and Saratoga.
- B. General Compliance.** SUBRECIPIENT shall comply with the provisions of 24 CFR 570, Subparts J and K, describing other program requirements, and the provisions of 2 CFR 200 relating to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards.

**SECTION 2. ADMINISTRATIVE REQUIREMENTS**

- A. Establishment and Maintenance of Records.** SUBRECIPIENT 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 the COUNTY.
- 1. Records to be Maintained.** The SUBRECIPIENT shall maintain all records required by the Federal regulations specified in 24 CFR 570.506 that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:
- a. Records providing a full description of each activity undertaken;
  - b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG Program;
  - c. Records required to determine the eligibility of activities;
  - d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
  - e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG Program;
  - f. Financial records as required by 24 CFR 570.502 and 24 CFR 84.21 - 28; and,
  - g. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.
- 2. Retention.** SUBRECIPIENT shall preserve and make available its records for the period of four (4) years from the date of final payment to SUBRECIPIENT under this AGREEMENT; or such longer period, if any, as may be required by applicable law; or if this AGREEMENT is completely or partially terminated, for a period of four (4) years from the date of any resulting final settlement.

- 3. Client Data.** The SUBRECIPIENT shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to the COUNTY monitors or their designees for review upon request.
- 4. HMIS Participation.** All agencies providing homeless services in receipt of funding from the COUNTY's CDBG Program are required to fully participate in the Homeless Management Information System ("HMIS") and work closely with the COUNTY's 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 PROGRAMs, the services provided, and consent to release the information to the COUNTY's OSH. Funded PROGRAMs must utilize all appropriate aspects of HMIS in order to generate the statistical information required for reporting to the COUNTY 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. SUBRECIPIENT will measure performance and outcomes relating to these funded PROGRAMs through the use of the HMIS statistical data, based on the HUD data elements, or other reporting requirements as determined by the COUNTY.
- 5. Disclosure.** The SUBRECIPIENT 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 SUBRECIPIENT's responsibilities with respect to services provided under this AGREEMENT, is prohibited unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.
- 6. Property Records.** The SUBRECIPIENT shall maintain real property inventory records that clearly identify properties purchased, improved or sold. Properties retained shall continue to meet eligibility criteria and shall conform to the "changes in use" restrictions specified in 24 CFR Section 570.503(b)(8), as applicable.
- 7. National Objectives.** The SUBRECIPIENT agrees to maintain documentation that demonstrates that the activities carried out with Funds provided under this AGREEMENT meet the CDBG Program's national objective of benefiting low-and moderate income persons, as defined in 24 CFR Section 570.208.
- 8. Close-outs.** The SUBRECIPIENT's obligation to the COUNTY shall not end until all close-out requirements are completed pursuant to 24 CFR 570.509. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the SUBRECIPIENTS), and determining the custodianship of records.

Notwithstanding the foregoing, the terms of this AGREEMENT shall remain in effect during any period that the SUBRECIPIENT has control over CDBG funds, including program income.

- 9. Audits and Inspections.** At any time during normal business hours, and as often as may be deemed necessary, SUBRECIPIENT agrees that HUD and/or COUNTY, and/or any of their respective authorized representatives, shall have access to and the right to examine SUBRECIPIENT's offices and facilities engaged in performance of this AGREEMENT and all its records with respect to all matters covered by this AGREEMENT. SUBRECIPIENT also agrees that HUD and/or COUNTY, 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, COUNTY shall not require access to any information of SUBRECIPIENT mutually determined by the parties hereto to be proprietary.
- a. **County Audits.** COUNTY may perform an independent audit. Such audits may cover program as well as fiscal matters. SUBRECIPIENT 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 SUBRECIPIENT.
  - b. **Independent Audits.** Funds will be set aside in each SUBRECIPIENT's budget for an independent audit. A separate line item will be established. SUBRECIPIENT 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. The audit must be completed and sent to COUNTY's OSH staff within the later of one hundred fifty (150) days of the end of this AGREEMENT or ninety (90) days after the end of SUBRECIPIENT's fiscal year. The independent fiscal audit shall conform to Generally Accepted Government Auditing Standards (GAGAS) 2 CFR 200.514(a) and the audit threshold 2 CFR 200.501(a).
  - c. **Requirements.** Such audits shall identify the funds received and disbursed under this AGREEMENT. For SUBRECIPIENTS that expend \$750,000 or more of Federal financial assistance in a fiscal year, in addition to conducting normal financial audit procedures, the SUBRECIPIENT'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 Part 200 Subpart E, "Cost Principles";
    - ii. Expenditures are in compliance with the grant agreements between the COUNTY and SUBRECIPIENT; 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 200 Subpart F "Audit Requirements".

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- iv. Funds may be set aside in SUBRECIPIENT's budget in an amount equal to COUNTY's fair share of SUBRECIPIENT's cost of an independent audit, if required.
- d. **Components.** The Audit must include the following:
  - 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. Schedule of Expenditures of Federal Awards;
  - v. Independent Auditor's Report on the Financial Statement and Schedule of Expenditures of Federal Awards;
  - vi. Auditor's Report on Internal Control over Financial Reporting and on Compliance and Other Matters;
  - vii. Auditor's Report on Compliance with Requirements Applicable to Major Programs and on Internal Control over Compliance;
  - viii. Schedule of Findings and Questioned Costs;
  - ix. Summary of Schedule of Prior Audit Findings;
  - x. Corrective Action Plan; and,
  - xi. Data Collection Form.

### **B. Procedures Concerning Reporting and Payments.**

1. **Program Income.** The SUBRECIPIENT shall report all program income (as defined at 24 CFR 570.500(a)) generated by activities carried out with CDBG funds made available under this AGREEMENT. The use of program income by the SUBRECIPIENT shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, the SUBRECIPIENT 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 COUNTY 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 COUNTY.
2. **Indirect Costs.** If indirect costs are charged, SUBRECIPIENT may invoice for indirect costs up to a de minimis rate of 10% per 2 CFR 200.414 (f). If SUBRECIPIENT requests an indirect cost rate above the de minimis rate of 10%, SUBRECIPIENT shall develop an indirect cost allocation plan for determining the appropriate SUBRECIPIENT's share of administrative costs and shall submit such plan to the COUNTY for review. The COUNTY may approve or deny the plan in its sole discretion. Indirect Costs may not be charged or Capital Improvements or Housing Rehabilitation Projects.
3. **Relocation and Real Property Acquisition.** SUBRECIPIENT shall comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (URA) and 24 CFR 570.606(b), and (b) the requirements of 24 CFR 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan (Plan) under section 104(d) of the HCD Act. Under the URA and the Plan, the SUBRECIPIENT must provide relocation assistance to persons (families,

individuals, businesses, non-profit organizations and farms) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted PROGRAM. All property occupants must be issued certain notices on a timely basis. The Plan also required the one-for-one replacement of any occupied or vacant occupiable low/moderate-income housing that is demolished or converted to another use in connection with a CDBG-assisted PROGRAM. Finally, the Plan requires the identification of the steps that will be taken to minimize displacement.

### **SECTION 3. PERSONNEL & PARTICIPANT CONDITIONS**

#### **A. Civil Rights**

- 1. General Compliance.** The SUBRECIPIENT agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.
- 2. Nondiscrimination.** The SUBRECIPIENT will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, sex, sexual orientation, actual or perceived gender identity, national origin, disability, or other handicap, age, marital status, family status, or status with regard to public assistance. The Subrecipient will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include, but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provision of this nondiscrimination clause.
- 3. Land Covenants.** The SUBRECIPIENT 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, SUBRECIPIENT shall 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, color, religion, sex, sexual orientation, actual or perceived gender identity, 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 and the United States are beneficiaries of and entitled to enforce such covenant, 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.
- 4. Section 504.** The SUBRECIPIENT agrees to comply with 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.

5. **Architectural Barriers Act.** The SUBRECIPIENT shall meet the requirements, where applicable, of the Architectural Barriers Act and the Americans with Disabilities Act, as set forth in 24 CFR 570.614. A building or facility designed, constructed, or altered with funds allocated or reallocated under CDBG program after December 11, 1995 and that meets the definition of a “residential structure” as defined in 24 CFR Part 40.2 or the definition of a “building” as defined in 41 CFR Part 101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 USC 4151-4157) and shall comply with the Uniform Federal Accessibility Standards. The Americans with Disabilities Act (“ADA”) (42 USC 12131; 47 USC 155, 210, 218, and 255) requires that the design and construction of facilities for first occupancy after January 26, 1993 must include measures to make them readily accessible and usable by individuals with disabilities. The ADA further 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.

**B. Affirmative Action**

1. **Approved Plan.** The SUBRECIPIENT agrees that it shall be committed to carry out pursuant to the County’s specifications an affirmative action program in keeping with the principles as provided in Executive Order 11246 (as amended).
2. **Women and Minority Business Enterprises.** 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 \$10,000 and when the SUBRECIPIENT or subcontractor is a for-profit organization/business.
3. **Access to Records.** The SUBRECIPIENT shall furnish and cause each of its sub-subrecipients to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the COUNTY, HUD or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with rules, regulations and provisions stated herein.
4. **Notifications.** The SUBRECIPIENT will send to each labor union or representative of workers with which it may have a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker’s representative of the SUBRECIPIENT’s commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. **EEO/AA Statement.** The SUBRECIPIENT will, in all solicitations or advertisements for employees placed by or on behalf of the SUBRECIPIENT, state that it is an Equal Opportunity and Affirmative Action employer. The SUBRECIPIENT shall comply with Executive Order 11246 as amended by Executive Order 12086 and the regulations issued pursuant thereto (41 CFR Chapter 60), and will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital status, or status with regard to public assistance. The SUBRECIPIENT will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship.

The SUBRECIPIENT agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

6. **Subcontract Provision.** The SUBRECIPIENT will include the provisions of Section 3. A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subrecipients or subcontractors.

### C. Employment Restrictions

1. **Prohibited Activities.** 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:
  - a. 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;
  - b. Any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election; or,
  - c. Any voter registration activity.
2. **Labor Standards.** The SUBRECIPIENT agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act, as amended, the provisions of Contract Work Hours, the Safety Standards Act, the Copeland "Anti-Kickback" Act (40 U.S.C. 276a-276a-5; 40 U.S.C. 327 and 40 U.S.C. 276c and all other applicable laws pertaining to labor standards insofar as those acts apply to the performance of this AGREEMENT. The SUBRECIPIENT shall maintain documentation which demonstrates compliance with the hour and age requirements of this part. Such documentation shall be made available to the COUNTY for review upon request.

The David Bacon Act (40 USC, Chapter 3, Section 276a-5; and CFR Parts 1, 3, 5 and 7) is triggered when construction work over \$2,000 is financed in whole or in part with CDBG Funds. It requires that workers receive no less than the prevailing wages being paid for similar work in the same

area. Davis-Bacon does not apply to the rehabilitation of residential structures containing less than eight units or force account labor (construction carried out by employees). HUD has concluded that new construction (as well as rehabilitation) of residential property is exempt from Federal labor standards if the property contains less than eight (8) units. SUBRECIPIENT shall comply with HUD requirements pertaining to such contracts and the applicable requirements of the regulations of the Department of Labor under 29 CFR Parts 3, 5 and 5a, governing the payment of wages and the ratio of apprentices and trainees to journeymen; provided, that if wage rates higher than those required under such regulations are imposed by state or local law, nothing hereunder is intended to relieve SUBRECIPIENT of its obligation, if any, to require payment of the higher rates. SUBRECIPIENT shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of 29 CFR 5.5 and for such contracts in excess of Twenty Five Thousand Dollars (\$25,000), pursuant to 29 CFR 5a.3.

**3. "Section 3" Clause.** Compliance with the provisions of "Section 3" of the **Housing and Community Development Act of 1968** pertaining to Employment Opportunities for Lower-Income Persons (12 USC 1701u), requiring that, to the greatest extent feasible on PROGRAMs financed by HUD, a SUBRECIPIENT must:

- a. 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 PROGRAM, are given to persons with household income that is at or below 80% of the median income for San Jose Metropolitan Statistical Area defined by the Secretary of HUD residing within the San Jose metropolitan area. Where feasible, priority should be given to residents within the service area of the PROGRAM or the neighborhood in which the PROGRAM is located who have household income that is at or below 80% of the median income for San Jose Metropolitan Statistical Area (MSA 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 the San Jose Metropolitan Statistical Area. The SUBRECIPIENT certifies and agrees that no contractual or other legal incapacity exists which would prevent compliance with these requirements;
- b. 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 PROGRAM to business concerns that provide economic opportunities for persons residing within the metropolitan area in which the CDBG-funded PROGRAM is located and have household income that is at or below 80% of the median income for San Jose Metropolitan Statistical Area 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 PROGRAM is located who have household income that is at or below 80% of the median income for San Jose Metropolitan Statistical Area 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;

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- c. 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 \$200,000 or more of HUD funding is provided for housing rehabilitation, housing construction, or other public construction PROGRAMs, and/or \$100,000 or more to subcontractors;
- d. At a minimum, provide documentation on federal compliance, reporting and outreach efforts; and,
- e. The SSUBRECIPIENT further agrees to comply with these “Section 3” requirements and to include the following language in all subcontracts executed under this Agreement:

*The work to be performed under this agreement is a PROGRAM 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. 1701. “Section 3” requires that to the greatest extent feasible opportunities for training and employment be given to low and very low income residents of the PROGRAM area and contracts for work in connection with the PROGRAM be awarded to business concerns that provide economic opportunities for low and very low income persons residing in the metropolitan area in which the PROGRAM is located.*

- 4. **Notifications.** The SUBRECIPIENT agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker’s representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- 5. **Subcontracts.** The SUBRECIPIENT will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The SUBRECIPIENT will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

**D. Conduct.**

- 1. **Assignability.** The SUBRECIPIENT shall not assign or transfer any interest in this AGREEMENT without the prior written consent of the COUNTY provided, however, that claims for money due or to become due to the SUBRECIPIENT from the COUNTY under this AGREEMENT may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the COUNTY.
- 2. **Hatch Act.** The SUBRECIPIENT 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. Participants employed in the administration of the

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CDBG Program, and participants whose principal employment is in connection with an activity financed by the CDBG Program or its proceeds are subject to limitation on political activities under the Hatch Act (5 U.S.C. 1502(a), 18 U.S.C. 595). All participants may take part in non-partisan activities outside working hours.

- 3. Resident Aliens.** (24 CFR 570.613) Certain newly legalized aliens, as described in 24 CFR Part 49, are not eligible to apply for the benefits under covered activities funded by the CDBG Program. "Covered activities" are activities meeting the requirements of 24 CFR 570.208(a) that either (1) have income eligibility requirements limiting benefits exclusively to low- and moderate-income persons, or (2) are targeted geographically or otherwise to primarily benefit low- and moderate-income persons (except for activities that benefit the public at large), and provide benefits on the basis of an application.
- 4. Conflict of Interest.** Under 24 CFR Part 570.66, no officer, employee or agent of COUNTY or SUBRECIPIENT who exercises any functions or responsibilities with respect to the CDBG Program or to the services and work to be performed by SUBRECIPIENT 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. SUBRECIPIENT 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.
- 7. Subcontracts.** SUBRECIPIENT shall not award any contract or subcontract which is otherwise in compliance with this AGREEMENT to any person or subcontractor who is at the time ineligible under the provisions of any applicable regulations of the Department of Labor to receive an award of such contract.
- 8. Lobbying.** The SUBRECIPIENT hereby certifies that:

  - a.** No Federal appropriated funds have been paid or will be paid, by or on behalf of the SUBRECIPIENT, 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 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.
  - b.** 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 SUBRECIPIENT shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- c. The SUBRECIPIENT shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all SUBRECIPIENTS shall certify and disclose accordingly.
  - d. Lobbying Certification. 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.
- 9. **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.
- 10. **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 COUNTY and HUD for determination by HUD as to whether patent protection on such invention or discovery will 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.
- 11. **Religious Organizations.** SUBRECIPIENT shall not use any funds to construct, rehabilitate, maintain, or restore religious structures (including those which may be historic properties) currently used for religious purposes in accordance with the federal regulations specified in 24 CFR Section 570.200(j). CDBG FUNDS shall not be used to construct, rehabilitate, maintain, or restore structures or other real property owned by "pervasively sectarian" organizations. Block grant funds shall not be used to assist a religious organization in acquiring property. These prohibitions apply whether or not the property is used for religious services or instruction or is used in any other way for religious activities. CDBG 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 CDBG 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 CDBG expenditure for the public services.

**SECTION 4. ENVIRONMENTAL CONDITIONS**

**A. Environmental Requirements.** (24 CFR 470.604) SUBRECIPIENT is not allowed to incur program expenses until the COUNTY has performed an environmental review of the proposed activities, received the release of funds, and provided the SUBRECIPIENT with formal clearance to initiate them, along with directives for any action necessary to mitigate negative environmental impacts (24 CFR Part 58).

1. SUBRECIPIENT will submit the correct Environmental Review Record for Maintenance and or Minor Rehabilitation activities to the County Housing Rehabilitation Specialist or HCD Program Manager for review.
2. County will provide SUBRECIPIENT with technical guidance when needed.
3. County will forward the executed Environmental Review Record to the SUBRECIPIENT once approved (Formal Clearance).

**B. Air and Water.** This AGREEMENT is subject to 42 U.S.C. 1857, and 33 U.S.C. 1251 *et sec.*, and the regulations issued pursuant thereto. Therefore, SUBRECIPIENT agrees as follows:

- a. SUBRECIPIENT 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. SUBRECIPIENT agrees to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. 1857c-8) 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. SUBRECIPIENT 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 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. SUBRECIPIENT agrees that criteria and requirements in subparagraphs (a) through (d) of this section will be included in every non-exempt subcontract and SUBRECIPIENT shall take such action as the COUNTY or HUD requires as a means of enforcing such provisions
- e. In no event shall any amount of the assistance provided under this AGREEMENT be utilized with respect to a facility that 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.

- C. Flood Disaster Protection.** Notwithstanding any other provision of this Agreement, SUBRECIPIENT 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 SUBRECIPIENT 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, ~., 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.

- D. Lead-Based Paint.** Notwithstanding any other provision, SUBRECIPIENT agrees to comply with the regulations issued by the Secretary of HUD set forth in 24 CFR 570.608 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.

- E. Historic Preservation.** SUBRECIPIENT shall not violate provisions of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a federal, state, or local historic property list. Before any commitments are made to make any physical improvements or alterations or demolition of any building, SUBRECIPIENT shall receive assurances from the COUNTY that the SUBRECIPIENT is in compliance.



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## EXHIBIT D ASSURANCES

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The CITY hereby assures and certifies that it will comply with all regulations, policies, guidelines and requirements applicable to the acceptance and use of Federal funds for this Federally-assisted program and will be responsible for implementing and complying with all relevant future changes to Federal Regulations or OMB Circulars. Specifically the CITY gives assurances and certifies with respect to the PROGRAM that it is compliant with the following Regulations as defined by 24 CFR, Part 570, Subpart J; 24 CFR, Part 570, Subpart K; and will be conducted and administered in conformity with “Public Law 88.352 and Public Law 90-284. *Full text of the regulations can be located at: <https://www.ecfr.gov/cgi-bin/ECFR?page=browse>*

1. **570.505. Use of Real Property**
2. **570.506. Records to be Maintained**
3. **570.508. Public Access to Public Records**
4. **570.601. Public Law 88-352 and Public Law 90-284;** affirmatively furthering fair housing; Executive Order 11063, as amended by Executive Order 12259 addresses discrimination. HUD regulations implementing Executive Order 11063 are contained in 24 CFR, Part 107.
5. **570.602. Section 109 of the Act addresses discrimination**
6. **570.603. Labor Standards**
7. **570.604. Environmental Standards**
8. **570.605. National Flood Insurance Program**
9. **570.606. Displacement, Relocation, Acquisition, and Replacement of Housing.**
10. **570.607. Employment and Contracting Opportunities**
11. **570.608. Lead-Based Paint**
12. **570.609. Use of Debarred, Suspended, or Ineligible Contractors or CITYs**
13. **570.610. Uniform Administrative Requirements and Cost Principles.** The COUNTY, its Cities, agencies or instrumentalities, shall comply with the policies, guidelines, and requirements of 24 CFR Part 85 (Common Rule), and OMB Circulars A-110 (Grants and Agreements with Non-Profit Organizations), A-122 (Cost Principles for Non-Profits), A-128 (Audits of State and Local Governments-implemented at 24 CFR, Part 24), and A-133 (Audits of Institutions of Higher Education and Other Non-Profit Institutions), as applicable, as they relate to the acceptance and use of Federal funds under this part. The applicable sections of 24 CFR, Part 85 and OMB Circular A-100 are set forth at 570.502.
14. **570.611. Conflict of Interest**
15. **570.612. Executive Order 12372** allows States to establish its own process for review and comment on proposed Federal financial assistance programs, specifically the use of CDBG funds for the construction or planning of water or sewer facilities.
16. **570.613. Eligibility Restrictions for Certain Resident Aliens**
17. **570.614. Architectural Barriers Act and the Americans with Disabilities Act.**

EXHIBIT E

DECLARATION OF CONTRACTOR

(To be completed by all Type I Contractors)

This is a Type I service contract under the Board of Supervisor’s Resolution of Contracting Principles.

Type I Category: **Section II C.6**  
Explanation: **Contract with another Public Government Agency**

I am authorized to complete this form on behalf of the **TOWN OF LOS GATOS**.  
I have used due diligence in obtaining this information, and this information contained herein is complete and accurate.

**CONTRACT PROVISIONS TO IMPLEMENT THE TERMS OF THE RESOLUTION RE: CONTRACTING PRINCIPLES**

This CONTRACT is a Type I service contract, subject to the Resolution of Contracting Principles adopted by the Board of Supervisors on October 28, 1997 and subsequently amended on October 21, 2008. Accordingly, CITY shall comply with all of the following:

- a. CITY shall, during the term of this contract, comply with all applicable federal, state, and local rules, regulations, and laws.
- b. Contractor shall maintain financial records adequate to show that COUNTY funds paid under the contract were used for purposes consistent with the terms of the contracts. These records shall be maintained during the term of this contract and for a period of three (3) years from termination of this contract or until all claims if any, have been resolved, whichever period is longer, or longer if otherwise required under other provisions of this contract.

The failure of Contractor to comply with this Section or any portion thereof may be considered a material breach of this contract and may, at the option of the County, constitute grounds for the termination and/or non-renewal of the contract. Contractor shall be provided reasonable notice of any intended termination or non-renewal on the ground of non-compliance with this Section, and the opportunity to respond and discuss the COUNTY’s intended action.

**Town Manager Signature:** \_\_\_\_\_ **Date**

**Print Name:** \_\_\_\_\_

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EXHIBIT F

INSURANCE REQUIREMENTS FOR  
STANDARD CONTRACTS ABOVE \$100,000

Indemnity

The Contractor shall indemnify, defend, and hold harmless the County of Santa Clara (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor contests its obligation to indemnify, defend and/or hold harmless the County under this Agreement and does not prevail in that contest.

Insurance

Without limiting the Contractor's indemnification of the County, the Contractor shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

A. Evidence of Coverage

Prior to commencement of this Agreement, the Contractor shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Contractor upon request.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed. The Contractor shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

B. Qualifying Insurers

All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Insurance Manager.

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EXHIBIT F

C. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County of Santa Clara or their designated agent.

D. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:

- a. Each occurrence - \$1,000,000
- b. General aggregate - \$2,000,000
- c. Products/Completed Operations aggregate - \$2,000,000
- d. Personal Injury - \$1,000,000

2. General liability coverage shall include:

- a. Premises and Operations
- b. Products/Completed
- c. Personal Injury liability
- d. Severability of interest

3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

**Additional Insured Endorsement**, which shall read:

“County of Santa Clara, and members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively, as additional insureds.”

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy. Public Entities may also be added to the

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additional insured endorsement as applicable and the contractor shall be notified by the contracting department of these requirements.

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

4a. Aircraft/Watercraft Liability Insurance (Required if Contractor or any of its agents or subcontractors will operate aircraft or watercraft in the scope of the Agreement)

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired aircraft/watercraft.

5. Workers' Compensation and Employer's Liability Insurance

- a. Statutory California Workers' Compensation coverage including broad form all-states coverage.
- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

E. Special Provisions

The following provisions shall apply to this Agreement:

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
2. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. However, this shall not in any way limit liabilities assumed by the Contractor under this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Contractors obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.

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EXHIBIT F

3. Should any of the work under this Agreement be sublet, the Contractor shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Contractor may insure subcontractors under its own policies.
4. The County reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.

F. Fidelity Bonds (Required only if contractor will be receiving advanced funds or payments)

Before receiving compensation under this Agreement, Contractor will furnish County with evidence that all officials, employees, and agents handling or having access to funds received or disbursed under this Agreement, or authorized to sign or countersign checks, are covered by a BLANKET FIDELITY BOND in an amount of AT LEAST fifteen percent (15%) of the maximum financial obligation of the County cited herein. If such bond is canceled or reduced, Contractor will notify County immediately, and County may withhold further payment to Contractor until proper coverage has been obtained. Failure to give such notice may be cause for termination of this Agreement, at the option of County.