

**AN AGREEMENT FOR GRANT FUNDS
BETWEEN THE
CITY OF FONTANA HOUSING AUTHORITY
AND
JAMBOREE HOUSING CORPORATION**

THIS AGREEMENT FOR GRANT FUNDS ("Agreement"), made and entered into this 13th day of October, 2021, by and between the City of Fontana Housing Authority, a municipal corporation (herein referred to as "Authority"), and Jamboree Housing Corporation, a California nonprofit public benefit corporation, with its principal place of business at 17701 Cowan Street, Suite 200, Irvine, CA 92614 (herein referred to as "Grantee").

WHEREAS, Grantee is a California nonprofit public benefit corporation that develops affordable housing and supportive and life enhancing services; and

WHEREAS, Grantee is the sole member and manager of JHC-Sierra LLC, a California limited liability company ("General Partner"), which is the general partner of Sierra Housing Partners LP, a California limited partnership ("Partnership"); and

WHEREAS, the Authority, leased that certain real property located at 16839 Ramona Avenue, Fontana, California (the "Premises") to the Partnership pursuant to the terms of that certain Ground Lease dated as of December 12, 2019; and

WHEREAS, pursuant to the terms of the Ground Lease, the Partnership has constructed at mixed use development consisting of a 60-unit multifamily low-income rental housing project known as Sierra Fountains and an approximately two thousand nine hundred eighty-seven (2,987) square foot commercial/retail space ("Commercial Space"); and

WHEREAS, the Partnership entered into a Master Lease Agreement dated December 16, 2019 with Jamboree Ventures LLC, a California limited liability company ("Ventures"), for the Commercial Space; and

WHEREAS, Grantee is the sole member and manager of Ventures; and

WHEREAS, Ventures entered into a Standard Multi-Tenant Shopping Center Lease – Net dated December 16, 2019 with Cucamonga Valley Medical Group, Inc. ("Subtenant") for the Commercial Space ("Sublease") for a term of 17 years commencing on the date that is thirty (30) days after the date the Partnership obtains a temporary certificate of occupancy for the building shell of the Commercial Space. The Sublease limits the use of the Commercial Space to provide health care services ("Permitted Use"); and

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WHEREAS, the Subtenant is obligated to install the tenant improvements for the Commercial Space ("Tenant Improvements") pursuant to the terms of the Work Letter attached as Exhibit "C" to the Sublease ("Work Letter"); and

WHEREAS, the Authority acknowledges receipt of copies of the Master Lease and the Sublease; and

WHEREAS, Authority wishes to grant Grantee a Two Hundred Fifty Thousand Dollar (\$250,000) grant ("Grant") from the Authority's Low to Moderate Income Housing Fund to construct the Tenant Improvements; and

WHEREAS, the Grantee desires to provide the proceeds of the Grant to the Subtenant to install the Tenant Improvements in accordance with the terms of the Sublease, including the Work Letter; and

WHEREAS, the Authority chooses to provide the Grant for the Tenant Improvements, which benefit the City of Fontana ("City"), its residents, businesses and property owners, and employees, because it is unable to provide such services with its own forces; and

WHEREAS, it is beneficial to the City, its residents, business and property owners, and employees and the public welfare that the health care services be provided pursuant to the terms of the Sublease; and

WHEREAS, Grantee desires to cause the Subtenant (or any subsequent subtenant of the Commercial Space) provide to operate the Commercial Space in accordance with the Permitted Use; and

WHEREAS, the City Council, on the 12th day of October, 2021, approved this Agreement and authorized the City Manager to execute this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the promises herein contained, Authority and Grantee agree as follows:

1. DESCRIPTION OF SERVICES

(a) The Grantee shall solely use the Grant Funds to assist the Subtenant construct the Tenant Improvements ("Project") in accordance with the terms of the Sublease, including the Work Letter. Grantee shall have four (4) months from the execution of this Agreement to complete the Tenant Improvements in accordance with the Sublease and the Work Letter, subject to delays resulting from events of force majeure. Grantee may request an additional four (4) weeks by submitting a request in writing to Authority. Authority may at its own sole discretion approve the additional four (4) week request.

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(b) [Reserved.]

(c) Grantee shall require the Subtenant to provide annual reports to Authority regarding Permitted Use being provided by Subtenant. Such reports shall be due annually each year this Agreement is in place.

(d) Grantee warrants that it will provide the funds granted by this Agreement to the Subtenant solely to construct the Tenant Improvements in accordance with the terms of the Sublease, including the Work Letter. If the Tenant Improvements are canceled or the scope substantially altered, Grantee agrees to notify Authority and to refund the grant amount in full or in part as directed by Authority.

(e) Authority determines that funding is for a project that provides a public benefit within the City of Fontana.

2. GRANT PAYMENT

(a) **Maximum Grant Funds.** The Authority shall provide Grantee a maximum grant amount of Two Hundred Fifty Thousand Dollars (\$250,000) documented through a promissory note in order to fund the Project.

(b) **Specific Use of Authority Funds.** Grant funds shall be used solely for the construction of the Tenant Improvements, which are generally depicted in Exhibit A.

(c) **Payment Schedule.** Authority shall fund Grantee with Grant Funds in two (2) disbursements, one at fifty percent (50%) completion of the Tenant Improvements and the final one at one hundred percent (100%) completion of the Tenant Improvements.

(d) **Grant Fund Forgiveness.** Authority will forgive Grant Funds at a rate of ten percent (10%) each year the Sublease or a substitute sublease which provides for the Permitted Use is in place. After the Grantee has contracted with the Subtenant or a substitute subtenant for the Permitted Use for a total of ten (10) years, the Grant Funds shall be forgiven.

(e) **Limitation on Use of Authority Funds.** Grant funds provided by Authority under this Agreement shall not be used for political campaigning purposes or activities.

3. TERM. The term of this Agreement shall commence on the last date of execution by Parties, and continue for a term of ten (10) years.

3. AUTHORITY PROJECT MANAGER AND SERVICES BY AUTHORITY

Authority's "Project Manager", as that staff person is designated by Authority from time to time, is City Manager or his designee.

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4. PROGRESS AND COMPLETION; DELAY DAMAGES

Grantee shall cause the Subtenant to commence work on the Project promptly upon receiving written authorization to proceed with the work by the Authority's Project Manager and receipt of an executed Agreement. The Tenant Improvements shall be completed within the time period specified in Section 1(a) above and the Commercial Space shall be used for the Permitted Use commencing on the completion of the Tenant Improvements for the term of this Agreement. If the Grantee fails to enforce the Subtenant's obligation to construct the Tenant Improvements in accordance with the terms of the Sublease and this Agreement, the Grant Funds shall be repaid to Authority; provided, however, that Grantee shall not be obligated to repay the Grant Funds so long as Grantee is diligently and in good faith causing Ventures to enforce the terms of the Sublease and, if the Sublease is terminated during the term of this Agreement, Grantee is diligently and in good faith causing Ventures to sublease the Commercial Space to a new subtenant to operate the Commercial Space for the permitted use. Manager may take appropriate actions under this Agreement, at law or in equity, including requiring Grantee to repay to Authority any funds received for such projects.

5. OWNERSHIP OF DOCUMENTS

Authority may request any drawings, designs, data, photographs, report and other documentation directly related to the project (other than Grantee's drafts, notes and internal memoranda), including duplication of same, prepared by Grantee in the performance of these services.

Grantee shall submit all copies of receipts of purchase for all project materials purchased from Grant Funds. These shall be submitted with the midterm and/or final project report.

6. PERSONAL SERVICES/NO ASSIGNMENT/SUBCONTRACTOR

Grantee's "Project Manager" is designated as, Michael Massie or other Authority-approved representative, is deemed to be specially experienced and is a key member of the project team of Grantee, and shall be directly involved in performing, supervising or assisting in the performance of this work. She/he shall communicate with, and periodically report to, Authority's Project Manager on the progress of the work. No work shall be assigned to a subcontractor without Authority's written consent.

7. HOLD HARMLESS AND INDEMNITY

(a) Hold Harmless for Grantee's Damages. Grantee holds Authority, its elected officials, officers, and employees, harmless from all Grantee's claims, demands, lawsuits, judgments, damages, losses, injuries or liability to Grantee, to Grantee's employees, to Grantee's volunteers, contractors or subcontractors, or to the owners of Grantee's firm, whether damages, losses, injuries or liability occur during the work

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required under this Agreement, or occur while Grantee is on Authority property, or which are connected, directly or indirectly, with Grantee's performance of any activity or work required under this Agreement.

(b) Defense and Indemnity of Third Party Claims/Liability. Grantee shall investigate, defend, and indemnify Authority, its elected officials, officers, employees, and volunteers from any claims, lawsuits, demands, judgments, and all liability including, but not limited to, monetary or property damage, lost profit, personal injury, wrongful death, general liability, automobile, infringement of copyright/patent/trademark, or professional errors and omissions arising out of, directly or indirectly, an error, negligence, or omission of Grantee or Grantee's volunteers, contractors, subcontractors, or the willful misconduct of Grantee or Grantee's volunteers, contractors, subcontractors, in performing the services described in, or normally associated with, this type of contracted work. The duty to defend shall include any suits or actions in law or equity concerning any activity, product or work required under this Agreement, and also include the payment of all court costs, attorney fees, expert witness costs, investigation costs, claims adjusting costs and any other costs required for and related to such litigation.

(c) No Waiver. Authority does not waive, nor shall be deemed to have waived, any indemnity, defense or hold harmless rights under this section because of the acceptance by Authority, or the deposit with Authority, of any insurance certificates or policies described in Section 9.

8. INSURANCE

Without limiting Grantee's indemnification of Agency, and prior to commencement of Work, Grantee shall cause the Subtenant to obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to Agency.

General liability insurance. Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Workers' compensation insurance. Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000). Consultant shall submit to Agency, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of Agency, its officers, agents, employees and volunteers.

Primary/noncontributing. Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by Agency shall not be required

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to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of Agency before the Agency's own insurance or self-insurance shall be called upon to protect it as a named insured.

Requirements not limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. If the Grantee maintains higher limits than the minimums shown above, the Agency requires and shall be entitled to coverage for the higher limits maintained by the Grantee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Agency.

All insurance policies shall be issued by a financially responsible company or companies authorized to do business in the State of California. Authority, its officers and employees, shall be named as additional insured. Grantee shall provide Authority with copies of certificates for all policies, in a format acceptable to Authority, with the appropriate named additional insured coverage and an endorsement that they are not subject to cancellation without 30 days prior written notice to Authority. Insurance certificates must be submitted by Grantee and approved by Authority before grant work commences.

9. RELATION OF THE PARTIES

The relationship of the parties to this Agreement shall be that of independent contractors and that in no event shall Grantee be considered an officer, agent, servant or employee of Authority. Grantee shall be solely responsible for any workers compensation insurance, withholding taxes, unemployment insurance, and any other employer obligations associated with the described work.

10. CORRECTIONS

In addition to the above indemnification obligations, Grantee shall correct, at its expense, all errors in the work, which may be disclosed during Authority's review of Grantee's work activities, report or plans as described in the Scope of Services. Should Grantee fail to make such correction in a reasonably timely manner, such correction shall be made by Authority, and the cost thereof shall be charged to Grantee or withheld from any funds due Grantee hereunder.

11. AUDIT OF RECORDS

At any time during normal business hours and as often as it may deem necessary, Grantee shall make available to a representative of Authority for

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examination of all its records with respect to all matters covered by this Agreement and will permit Authority to audit, examine and/or reproduce such records. Grantee will retain such financial records, time sheets, work progress reports, invoices, bills and project records for at least two years after termination or final payment under this Agreement.

12. WAIVER; REMEDIES CUMULATIVE

Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this Agreement, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

13. CONSTRUCTION OF LANGUAGE OF AGREEMENT

The provisions of this Agreement shall be construed as a whole according to its common meaning of purpose of providing a public benefit and not strictly for or against any party. It shall be construed consistent with the provisions hereof, in order to achieve the objectives and purposes of the parties. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders or vice versa.

14. MITIGATION OF DAMAGES

In all situations arising out of this Agreement, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

15. GOVERNING LAW

This Agreement, and the rights and obligations of the parties, shall be governed and interpreted in accordance with the laws of the State of California. Should litigation occur, venue shall be in the Superior Court of San Bernardino County.

16. NONDISCRIMINATION

Grantee shall comply with the federal Americans with Disability Act, Public Law 101-336, and observe the disability discrimination prohibitions of such laws in the performance of the work required under this Agreement.

17. CAPTIONS

The captions or headings in this Agreement are for convenience only and in no other way define, limit or describe the scope or intent of any provision or section of the Agreement.

18. AUTHORIZATION

Each party has expressly authorized the execution of this Agreement on its behalf and bind said party and its respective administrators, officers, directors, shareholders, divisions, subsidiaries, agents, employees, successors, assigns, principals, partners, joint venturers, insurance carriers and any others who may claim through it to this Agreement.

19. ENTIRE AGREEMENT BETWEEN PARTIES

Except for Grantee's proposals and submitted representations for obtaining this Agreement, this Agreement supersedes any other agreements, either oral or in writing, between the parties hereto with respect to the rendering of services, and contains all of the covenants and agreements between the parties with respect to said services. Any modifications of this Agreement will be effective only if it is in writing and signed by the party to be charged.

20. PARTIAL INVALIDITY

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

21. NOTICES

Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

TO AUTHORITY:

Mark Denny
City Manager
City of Fontana
8353 Sierra Ave.
Fontana, CA 92335

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TO GRANTEE:

Jamboree Housing Corporation
17701 Cowan Ave.
Suite 200
Irvine, CA 92614

In concurrence and witness whereof, this Agreement has been executed by the parties effective on the date and year first above written.

**CITY OF FONTANA HOUSING
AUTHORITY**

**GRANTEE
Jamboree Housing Corporation**

Mark Denny, City Manager

Michael Massie, Chief Development
Officer

ATTEST

Tonia Lewis, City Clerk

APPROVED TO FORM

Ruben Duran, City Attorney

EXHIBIT A

Depiction of Tenant Improvements