ROB BONTA
Attorney General of California
BENJAMIN G. DIEHL
Supervising Deputy Attorney General
JOSHUA N. SONDHEIMER (SBN 152000)
JOSE J. RAMOS (SBN 324066)
ANTHONY C. PINGGERA (SBN 320206)
Deputy Attorneys General
455 Golden Gate Ave, Ste 11000
San Francisco, CA 94102-7020
Telephone: 415-510-4420
Fax: 415-703-5480
E-mail: Joshua.Sondheimer@doj.ca.gov
Attorneys for Defendant and Respondent California Department of Social Services

Exempt from fees – Gov. Code, § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF PLACER

CITY OF LINCOLN, a California municipal corporation, CITY OF LINCOLN, by and for the People of the State of California,

Plaintiff and Petitioner,

v.

THE GATHERING INN, a California public benefit non-profit corporation; CALIFORNIA DEPARTMENT OF SOCIAL SERVICES, a California state agency, HORNE LLP, a Delaware limited liability partnership, and DOES 1 through 15 inclusive,

Defendants and Respondents.

Case No. S-CV-0053711

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT AND RESPONDENT CALIFORNIA DEPARTMENT OF SOCIAL SERVICES' DEMURRER TO PLAINTIFF AND RESPONDENT CITY OF LINCOLN'S COMPLAINT/PETITION

Date: February 11, 2025
Time: 8:25 a.m.
Dept: 42
Judge: The Honorable Trisha J. Hirashima

Trial Date: Not set
Action Filed: September 30, 2024

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

TABLE OF AUTHORITIES
(continued)

Page

INTRODUCTION

The Legislature established the Community Care Expansion (CCE) Program in 2021 to expand residential care capacity for elderly and disabled Californians with low incomes or who are experiencing homelessness. Last year, the California Department of Social Services (CDSS) granted funds under the Program to The Gathering Inn (TGI) to operate a medical respite and assisted living facility in an existing adult care facility located in the City of Lincoln (City). The City opposes TGI's project and seeks to prevent it from opening, asserting that CDSS has a "ministerial duty" to rescind TGI's grant on the ground that TGI allegedly was required, but failed, to demonstrate that City officials supported its application for CCE funding and that CDSS now has a "ministerial duty" to rescind TGI's grant. The City's claims against CDSS—for a writ of mandate and declaratory relief—are misplaced and lack any merit.

The City, first, lacks standing to seek to enforce CCE grant application requirements or CDSS's funding agreement with TGI. In addition, the application requirements do not, and cannot be construed to, give the City a local "veto" over projects approved under the CCE Program to expand critically needed county- and state-wide adult care capacity. The City, therefore, fails to, and cannot, demonstrate that CDSS is subject to any ministerial duty to rescind TGI's grant. Determining whether TGI sufficiently met CCE grant requirements was a matter within CDSS's discretion, and grantees have the right to cure any violation of Program requirements; moreover, CDSS has absolute discretion to determine whether any breach has been cured, and if not, what remedy to impose. Thus, the City cannot establish that CDSS is subject to a ministerial duty to rescind TGI's grant. Further, the City cannot show that CDSS's obligations under the funding agreement are mandated by "law," as required to support its mandamus claim.

The City's derivative claim for a judicial declaration that TGI "failed to comply" with the grant application requirements fails for the same reasons. In addition, the City fails to allege facts demonstrating any actual controversy between CDSS and TGI regarding TGI's compliance with grant application requirements, and its claim improperly seeks a declaration regarding "past acts" and to override CDSS's discretion in assessing compliance with program requirements.

CDSS's demurrer should be sustained without leave to amend.

STATEMENT OF FACTS

I. THE COMMUNITY CARE EXPANSION PROGRAM

To better address the needs of aging and disabled low-income and unhoused Californians, the Legislature made $860 million available under the CCE Program to be awarded by CDSS to qualifying applicants for the purchase, construction, or rehabilitation of properties to be used as "residential adult and senior care facilities." (Welf. & Inst. Code, § 18999.97 (Section 18999.97 or CCE statute), subd. (a); FAC ¶ 8.) To facilitate the establishment of these new or refurbished facilities, , the Legislature exempted CCE-funded projects from environmental review and from local zoning, permitting, and other requirements, providing broadly that any project that receives funds pursuant to the CCE Program "shall be deemed consistent and in conformity with any applicable local plan, standard, or requirement, and . . . shall not be subject to a conditional use permit, discretionary permit, or any other discretionary reviews or approvals." (*Id.* at subd. (*l*).)

The Legislature also provided that CDSS "at its discretion, may award grants in a manner that takes into consideration the prioritization of qualified residents who are experiencing homelessness or who are at risk of homelessness." (*Id.* at subd. (c)(1)(C).) CDSS was authorized to contract with a third-party administrator to facilitate the grant awards and provide operational services for the Program. (§ 18999.97, subd. (b)(1).) CDSS initially contracted with Advocates for Human Potential, Inc. (AHP) to provide these services, and subsequently named HORNE LLP (HORNE) as the third-party administrator in late May 2023. (See FAC ¶¶ 5, 8.)

II. CDSS'S REQUEST FOR APPLICATIONS FOR CCE PROGRAM GRANTS

CDSS issued a Request for Applications (RFA) for CCE funding in January 2022 jointly with the Department of Health Care Services, which sought applications for a separate grant program. (See FAC, Exh. A) The RFA provided that applications would be accepted and reviewed on a rolling basis "until all grant funds were exhausted." (*Id*., p. 6.)

Applicants were required, among other things, to "provide[] documentation of active community engagement and support, particularly with people with lived experience." (FAC, Exh. A, at p. 16.) The RFA explained this requirement by adding that: "Insights from the community should be included in project planning, design, implementation, and evaluation.

Examples may include survey results, notes taken during stakeholder engagement sessions, etc." (*Ibid*.) Applicants were provided a "Community Engagement Tracking Form" (Form 6) to record their community engagement efforts. (See FAC, Exhs. B, C.)

III. THE GATHERING INN AND IT'S APPLICATION FOR CCE FUNDING

A. The Gathering Inn

TGI is a non-profit organization that operates shelters and other programs in Placer County for persons who are experiencing homelessness. (FAC ¶¶ 2, 15.) TGI provides services to approximately 300 persons each day at various facilities throughout the county. (*Id.* ¶ 15.)

Among its other programs, TGI operates a medical respite program in central Placer County capable of serving 10 individuals. (See FAC, Exh. G at §§ 8, 30.) Medical respite involves the provision of medical care to patients upon discharge from an acute care hospital who are unable to recover from illness or injury on their own, where family or other caretakers are unavailable. (See FAC ¶ 16.) TGI is the only agency in the county operating a medical respite program for people experiencing homelessness. (*Id*., Exh. G at § 29.) Its existing respite program also provides patients other supportive services, including linking patients with "primary and specialty care physicians, home health agencies, mental health providers, substance abuse programs, income assistance, employment, housing, transportation, and more." (*Id.*, Exh. G at § 30.)

B. TGI initially applies for funding to build a new respite facility in Roseville

In July 2022, TGI submitted an application for a CCE Program grant to acquire land in Roseville, on which it intended to construct a new medical respite facility. (FAC ¶ 16.) TGI submitted letters of support for its application from Sutter Health, Anthem Blue Cross, and California Health & Wellness. (*Id.* ¶ 17.) TGI stated that it had obtained support from the Placer County Health and Human Services and verbal support from the Roseville City Council. (*Ibid*.)

CDSS subsequently advised TGI that to support its application, TGI needed to provide clarification and additional information regarding the long-term sustainability of the proposed Roseville facility. (FAC ¶ 21 and Exh. D.) On January 13, 2023, CDSS's third-party administrator for the CCE Program, Advocates for Human Potential, Inc. (AHP), advised TGI that its application was "incomplete or otherwise ineligible for CCE funding." (See FAC ¶ 23 &

Exh. E.) TGI was advised that it could correct its application and that AHP would work with TGI on amendments so that its application could be re-reviewed. (FAC ¶ 23 & Exh. E.)

TGI met with AHP on February 6, 2023, and AHP in a follow-up email that day noted that TGI appeared to be proposing that its application be considered for a new site address. (FAC, Exh. F.) AHP advised TGI in the email that if it decided to request a re-review of its CCE grant application in connection with the new address, TGI would need to submit additional documentation and information within one week. (*Ibid*.) TGI submitted a request for re-review within the following week, noting that the project would include a 60-bed medical respite facility in the City of Lincoln in an existing residential care facility for the elderly (RCFE) with assisted living and memory care units. (See FAC ¶ 27 & Exh. G at §§ 14, 23.) TGI stated that it would also seek to license the facility's memory care unit as a 38-bed assisted–living RCFE. (See *id*., Exh. G at §§ 14, 26, 30.)

In or about May 2023, CDSS notified TGI that it intended to award TGI up to $6.45 million for the proposed Lincoln facility. (FAC ¶ 29.) Defendant HORNE replaced AHP as the third-party administrator of the CCE Program on or about May 30, 2023, and later entered into a Program Funding Agreement with TGI. (See FAC ¶ 5, 36.)

IV. THE CITY'S CLAIMS AGAINST CDSS

The City filed this action on September 30, 2024, and filed its FAC on November 22, 2024. The FAC alleges six causes of action, two of which are asserted against CDSS. In the Third Cause of Action for a writ of mandate pursuant to Code of Civil Procedure section 1085, the City contends that due to TGI's alleged failure to document community engagement and support and alleged misleading statements in its funding application, CDSS has a "ministerial public duty" pursuant to the RFA and Program Funding Agreement to "rescind the acceptance of TGI as a participant in the CCE Program," and accordingly to terminate the funding agreement and seek reimbursement of all funds already disbursed to TGI. (FAC ¶ 65; see also ¶¶ 64–71 & p. 27 [prayer].) In its Fourth Cause of Action, for declaratory relief, the City seeks a declaration that the RFA and Program Funding Agreement require a showing of local community engagement and support and that TGI "failed to comply" with this requirement. (FAC ¶¶ 72-80 & p. 27.)

V. STATUS OF TGI'S LINCOLN SITE

On September 20, 2024, before the City filed this action, city officials conducted an inspection of the Lincoln property and identified a number of alleged code violations. (FAC ¶ 41 & Exhs. I, J.) TGI has advised that it intends to cure the identified issues and will not open the site and accept patients until that process is completed. (FAC ¶ 42.) The City alleges that permits are required to undertake the repair work and that TGI has not yet applied for the permits. (*Ibid*.)

APPLICABLE LEGAL STANDARDS

A petitioner seeking writ relief has the burden to plead and prove entitlement to extraordinary writ relief. (*Marvin Lieblein, Inc. v. Shewry* (2006) 137 Cal.App.4th 700, 725.) In reviewing the sufficiency of the plaintiffs' allegations, the court treats the petition as admitting properly pleaded material facts but does not "assume the truth of contentions, deductions or conclusions of law." (*City of Dinuba v. County of Tulare* (2007) 41 Cal.4th 859, 865.) A demurrer must be sustained if the petition does not allege facts sufficient to constitute a cause of action or if judicially noticeable matters establish such facts are lacking. (*McKenney v. Purepac Pharmaceutical Co*. (2008) 167 Cal.App.4th 72, 78.)

DISCUSSION

I. THE CITY FAILS TO ALLEGE FACTS SUFFICIENT TO ESTABLISH A BENEFICIAL INTEREST OR THAT CDSS IS SUBJECT TO A MINISTERIAL DUTY TO RESCIND TGI'S GRANT

The City fails to allege facts sufficient to establish that (1) as a non-party to TGI's grant application and funding award, it has a beneficial interest in the enforcement of CDSS's alleged ministerial duty to rescind TGI's grant, or (2) that CDSS is subject to any such ministerial duty. (FAC ¶ 65.) The City therefore fails to meet the requirements to state a claim for writ relief. (See *AIDS Healthcare Foundation v. Los Angeles County Dept. of Pub. Health* (2011) 197 Cal.App.4th 693, 700; Code Civ. Proc., §§ 1085, 1086.)

A. The City Lacks a Beneficial Interest in Rescission of TGI's Grant

First, the City fails to allege facts sufficient to establish that, as a non-party to TGI's CCE grant application or funding agreement, it has the requisite direct and substantial interest in the performance of CDSS's purported duty under law to rescind TGI's grant.

The "beneficial interest" requirement "'has been generally interpreted to mean that one may obtain the writ only if the person has some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large.'" (*SJJC Aviation Servs., LLC v. City of San Jose* (2017) 12 Cal.App.5th 1043, 1053 (*SJJC*), quoting *Carsten v. Psychology Examining Com*. (1980) 27 Cal.3d 793, 796.) The petitioner's interest "'must be direct and substantial.'" (*Ibid*., quoting *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 165.)

Having a beneficial interest thus requires more than that a party may be "impacted" by a law or official action; rather, it requires the petitioner to show "'[a]t a minimum,'" that it ""'personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the [respondent].'"" (*County of San Diego v. San Diego NORML* (2008) 165 Cal.App.4th 798, 814 (*NORML*), quoting *Valley Forge College v. Americans United* (1982) 454 U.S. 464, 472.) The beneficial interest standard "'is equivalent to the federal "injury in fact" test,'" which requires a party to prove that it has suffered ""'an invasion of a legally protected interest that is '(a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical.'"'" (*SJJC Aviation*, *supra*, 12 Cal.App.5th at p. 1053, quoting *Associated Builders & Contractors, Inc. v. San Francisco Airports Com*. (1999) 21 Cal.4th 352, 362.)

The City fails to allege any such special, direct, substantial, and concrete injury. The City contends that CDSS's alleged failure to rescind TGI's grant "has and will cause the City, and all members of the general public who live, work and go to school within the City, to suffer substantial, clear and certain irreparable injury," but fails to explain how. (FAC ¶ 70.) Its wholly conclusory allegations fail to support any finding of the requisite interest. Indeed, the City's assertion that it and "all members of the general public" will be injured if a writ is not issued precludes any determination that the City has any "special interest" beyond that "held in common with the public at large." (*SJJC*, *supra*, 12 Cal.App.5th at p. 1053.)

The City elsewhere alleges that it "opposes" TGI's facility because "the City is too small to handle a homeless medical respite facility" of the size TGI intends, and "does not have police, fire, and emergency medical resources" to "absorb what would undoubtedly be an increase in

calls for services at the Lincoln site." (FAC ¶ 33.) But these allegations are unsupported by any facts and are far too conclusory and conjectural to demonstrate the requisite concrete "injury-in-fact," particularly in light of the fact that an adult and senior care facility capable of housing "in excess of 100 people" previously operated at the site. (FAC ¶ 24.) The City also alleges that TGI's facility is "approximately 1,000 feet" from a middle school and in the proximity of two other schools, but fails to allege how this would result in concrete injury to students or the City, or how CDSS's non-performance of its alleged duty to rescind TGI's grant for TGI's alleged failure to sufficiently demonstrate community support may be deemed the cause of any injury.

Finally, the City fails to allege how, as a non-party to TGI's CCE grant application or Program Funding Agreement, it has any "direct and substantial" interest in CDSS's alleged duty to rescind TGI's grant award. The City does not allege that it is a third-party beneficiary to TGI's grant or funding agreement, nor could it allege facts sufficient to establish that it is. (See *The H.N. & Frances C. Berger Foundation v. Perez* (2013) 218 Cal.App.4th 37, 43–46 (*Berger Foundation*) [holding that lot owner was not intended beneficiary of road improvement agreements between developer and county, and thus lacked standing to enforce agreement].) The City therefore lacks a sufficient beneficial interest in CDSS's performance of its alleged duty to terminate TGI's contract, particularly as CDSS is "quite able to protect its own interests." (*McDonald v. Stockton Met. Transit Dist*. (1973) 36 Cal.App.3d 436, 443 (*McDonald*).)

McDonald is instructive. There, users of bus services sought a writ of mandate to require a transit district to install 20 bus stop shelters called-for under a grant agreement with the federal government. (*McDonald*, *supra*, 36 Cal.App.3d at pp. 437–440.) The district had sought the federal government's approval to redirect the funds for other purposes, citing, among other things, "neighboring property owners' opposition to construction of the shelters." (*Id*. at p. 438.) The trial court rejected the petition, and the court of appeal affirmed, finding that the bus users lacked a beneficial interest in enforcement of the grant agreement. "The prime factor in the denial of relief" the court stated, "is that petitioners, as users of the bus service, are seeking judicial enforcement of a contract whose primary obligee, the federal Department of Transportation, has never charged the obligor with a breach." (*Id.* at pp. 442.) The court noted

that the petitioners "are but indirect beneficiaries of a grant whose primary obligee, the government, is quite able to protect its own interests." (*Id.* at p. 443.) The petitioners therefore "failed to establish the beneficial interest necessary to sustain their application." (*Ibid*.)

For much the same reasons, and other reasons above, the FAC fails to demonstrate that the City has a beneficial interest in performance of CDSS's alleged duty to rescind TGI's CCE grant.

B. CDSS Is Not Subject to a Ministerial Duty to Rescind TGI's Grant

The City's mandamus claim also fails because the FAC fails to, and cannot, allege facts sufficient to establish that CDSS has a ministerial duty to rescind TGI's grant. A writ of mandate may only compel the performance of a "ministerial" act, which is an act that a public officer is required to perform "in a prescribed manner in obedience to the mandate of legal authority and without regard to his [or her] own judgment or opinion concerning such act's propriety or impropriety." (*Los Angeles Waterkeeper v. State Water Res. Control Bd.* (2023) 92 Cal.App.5th 230, 265–266 (*Waterkeeper*), internal quotations omitted.) Thus, a ministerial duty exists "where a statute or ordinance clearly defines the specific duties or course of conduct that a governing body must take, thus eliminating any element of discretion." (*Ibid*., internal quotations omitted.) The City fails to show that CDSS is subject to any such duty to rescind TGI's grant here.

First, the City fails to, and cannot, establish that the RFA required TGI to demonstrate engagement with and support from the local municipality in which a project would be located. Second, the funding agreement, in any event, provides grantees a right to cure any alleged breach, and gives CDSS discretion as to what remedies to invoke to address any default. And third, the City fails to, and cannot, establish that any statute or other source of law mandates that CDSS rescind TGI's participation in the CCE Program and terminate its award. To the contrary, determining whether an applicant has met application requirements is inherently discretionary. For this reason, government agreements generally are not enforceable through mandamus.

1. The RFA did not require a showing of support from City officials

The City's claim fails, first, because the RFA simply did not require CDSS to demonstrate support from City officials, as the City contends. Thus, the City cannot establish that CDSS was obliged to reject TGI's grant application and now has a ministerial duty to rescind its grant award.

The City alleges that TGI "was required . . . to reach out to community leaders and stakeholders, including local elected officials, and to obtain letters of support." (FAC ¶ 13.) While the RFA required applicants to demonstrate some degree of engagement with and support from stakeholders, it did not specify that applicants demonstrate engagement with or support from any particular individuals, officials, groups, or entities. As noted above, the relevant provision states only that: "Applicant provides documentation of active community engagement and support, particularly with people with lived experience." (FAC, Exh. A at § 3.4.) It then explains that "[i]nsights from the community should be included in project planning, design, implementation, and evaluation. Examples may include survey results, notes taken during stakeholder engagement sessions, etc." (FAC, Exh. A at § 3.4.) Nowhere in these indefinite and hortatory terms does the RFA require documentation of support specifically from officials in the municipality in which a project is proposed to be located. Indeed, the CCE statute, in expressly exempting funded projects from discretionary permitting, zoning, and other requirements, precludes construing the community engagement provision to require a demonstration of support from officials in the facility's town or city. (See Welfare & Inst. Code, § 18999.97, subd. (*l*).)

The City's reading of the RFA and proposed writ would, in effect, grant local officials a veto over CCE–funded projects. Such a result would directly contradict the Legislature's aim to facilitate expansion of capacity throughout the State to provide care for vulnerable aged and disabled Californians. The RFA and funding agreement must be read "to avoid an 'absurd result.'" (*Salton Bay Marina, Inc. v. Imperial Irrigation Dist.* (1985) 172 Cal.App.3d 914, 933 [quoting Civ. Code, § 1638].) These documents therefore cannot be construed to give the City veto power over TGI's project.

2. TGI has the right to cure and CDSS has remedial discretion

Even if the court were to conclude that the City adequately alleges that TGI was required to demonstrate support from City officials or that TGI's application was materially misleading, the City fails to, and cannot, establish that CDSS would be subject to a ministerial duty to rescind its grant to TGI. (See FAC ¶ 65 & p. 27.) The funding agreement gives grantees a "right to cure" any "breach, violation, or default" relating to the grant.." (FAC ¶ 67 & Exh. H at §§ 9.1, 9.2.)

Thus, even if TGI failed to meet certain terms of the RFA, it must now be given an opportunity to cure that deficiency.

The City suggests TGI's right to cure does not defeat its claim because there is "no possible way" that TGI could cure its alleged noncompliance with the RFA or funding agreement. (FAC ¶ 67.) But that is not a determination for the City, or a court, to make. The agreement not only gives TGI the "right" to cure any breach, it also places the determination of whether a default has been satisfactorily cured within HORNE and CDSS's "sole and absolute discretion." (FAC, Exh. H at §§ 9.2, 9.3.)

In addition, the agreement gives CDSS broad discretion regarding what remedy to impose if it finds a grantee in default, allowing CDSS to pursue "any" action or remedy authorized under the agreement or otherwise by law, most of which are far less drastic than rescinding the grant and demanding a recovery of funds. (FAC, Exh. H at §§ 9.3–9.3.11.) The agreement authorizes remedies including: an injunction; specific performance; withholding disbursement of funds pending correction; disallowing use of Program Funds for costs relating to the breach, violation, or default; or partially suspending or terminating Program Funds. (*Ibid.*)

Mandamus cannot be used to "'control the discretion conferred upon a public officer or agency,'" as the City attempts by its claim. (*Berger Foundation*, *supra*, 218 Cal.App.4th at p. 46 [quoting *State Bd. of Ed. v. Honig* (1993) 13 Cal.App.4th 720, 741].) As the court stated in *McDonald*, *supra*, in response to the bus riders' petition for a writ requiring the federal government to force a transit district to build bus stop shelters called for by its federal grant: "[T]he choice of sanctions is the government's, not the local bus users' or the court's. The mandamus sought by petitioners would have the practical effect of a degree [decree] of specific performance. It would obtrude upon the government's discretionary choice of contractual remedies." (36 Cal.App.3d at p. 443.). The City's mandamus claim likewise improperly seeks to interfere with CDSS's discretion to determine whether TGI complied with application requirements, and if not, what if any remedies would be appropriate to impose as a result.

3. No source of law imposes a duty on CDSS to rescind TGI's grant

The City also fails in the FAC to establish that any statute or other source of law requires

CDSS to rescind TGI's grant award, as the City must demonstrate to support its mandamus claim.

A duty subject to a writ of mandate must be one for the performance of an act "which the law specially enjoins." (Code Civ. Proc. § 1085; see *Waterkeeper, supra*, 92 Cal.App.5th at pp. 265–266.) The City strains to establish that CDSS's alleged ministerial duty arises under law by alleging that the RFA and Program Funding Agreement have the "force and effect of regulation" (FAC ¶¶ 11, 65.) However, the City bases this assertion on an unrelated provision of the CCE statute that provides that CDSS may implement the CCE Program through "all-county letters or similar instruction that shall have the same force and effect as regulations." (*Id.* ¶¶ 9 (citing § 18999.97, subd. (k).) The City's reliance on this provision is misplaced.

A request for applications for a grant is not an instruction "similar" to an "all-county letter." CDSS implements programs under its purview through various types of letters and notices that provide operational and administrative instruction to counties and other entities that implement CDSS-administered programs, including but not limited to: All County Letters (ACLs), All County Information Notices (ACINs), All County Welfare Director Letters (ACDWLs), All Tribal Leaders Letters (ATLL), Child Care Bulletins (CCBs), County Fiscal Letters (CFLs), County Fiscal Information Notices (CFINs), and Notices of Form Changes (GEN 127s), all available on CDSS's website by year of issuance on its webpage titled "Letters and Notices." (See RJN, Exh. A.) The Legislature regularly grants CDSS authority to implement programs through such "all-county letters or similar [written] instruction[s])," providing that they shall have the force and effect of regulation. (See, e.g., Welf. & Inst. Code, §§ 10310.1, subd. (m); 11322.82, subd. (b); 12201.7, subd. (c); 16523.2, subd. (a); 16548.5.) The RFA and Program Funding Agreement, by contrast, do not provide operational and administrative instruction to implementing counties and entities, like the above-referenced types of letters and notices. CDSS is unaware of any authority holding that an RFA or funding agreement constitutes an "instruction" that is "similar" to an all-county letter as contemplated by the Legislature.

The City cannot establish that the RFA or funding agreement otherwise impose upon CDSS any duty under law to rescind TGI's grant. Because contractual obligations are not duties arising under law absent special circumstances, and contractual remedies exist in the event of a breach, it

is well-established that "'[a]s a general proposition, mandamus is not an appropriate remedy for enforcing a contractual obligation against a public entity.'" (*300 DeHaro Street Investors v. Dept. of Housing & Community Development* (2008) 161 Cal.App.4th 1240, 1254, quoting *Shaw v. Regents of Univ. of Cal.* (1997) 58 Cal.App.4th 44, 52.)

In addition, because CDSS's determinations as to the sufficiency of TGI's grant application and whether to award funding to TGI were discretionary determinations, the City cannot establish that the RFA or Program Funding Agreement impose a "*ministerial* public duty" to rescind TGI's grant due to alleged deficiencies in its application. (FAC ¶ 65, italics added.) "When a writ of mandamus is sought with respect to a governmental body, it is essential that the court determine whether the act the writ seeks to compel is a legislative act, involving the exercise of discretion, or a purely ministerial" act. (*United Assn. of Journeymen v. City & County of San Francisco* (1995) 32 Cal.App.4th 751, 759.) And it is well-established that "a public entity's award of a contract, and all of the acts leading up to the award, are legislative in character," rather than ministerial. (*Fair Educ. Santa Barbara v. Santa Barbara Unified School Dist.* (2021) 72 Cal.App.5th 884, 891 [internal quotations and citations omitted].) This is, in part, because "the letting of contracts by a governmental entity necessarily requires an exercise of discretion guided by consideration of the public welfare." (*Joint Council of Interns & Residents v. Bd. of Supervisors* (1989) 210 Cal.App.3d 1202, 1211.) Here, CDSS's determinations as to the sufficiency of TGI's grant application are "acts leading up to the award" of funding to TGI, and thus are legislative and discretionary in character. (*Ibid.*) The City, thus, cannot establish that TGI is, or was, under any ministerial duty to reject TGI's application or must rescind its grant.

For all the independent reasons above, the Court should sustain CDSS's demurrer to the FAC's Third Cause of Action for a writ of mandate without leave to amend.

II. THE CITY FAILS TO ALLEGE ANY VALID BASIS FOR DECLARATORY RELIEF

The City also fails in its Fourth Cause of Action to state a valid claim for declaratory relief. The City seeks a declaration that the RFA and Program Funding Agreement "require[] a showing of local community engagement and support, and that TGI failed to comply with the regulations and is in breach of the agreement because it has not made such a showing." (FAC at p. 27.)

As an initial matter, the City's claim for a declaration that TGI "failed to comply" with the RFA is duplicative of the predicate for its claim for a writ of mandate, as discussed above (Argument, § I.B.1), and so fails for the same reasons. (See *Ball v. FleetBoston Fin. Corp*. (2008) 164 Cal.App.4th 794, 800 [holding demurrer is properly sustained to a claim for declaratory relief when wholly derivative of statutory claim].) The court, thus, need not consider this claim further.

The City's claim fails on its own terms, regardless. A valid claim for declaratory relief must allege "two essential elements: (1) a proper subject of declaratory relief, and (2) an actual controversy involving justiciable questions relating to the rights or obligations of a party." (*Lee v. Silveira* (2016) 6 Cal.App.5th 527, 546 [internal quotations and citations omitted].) The City's claim fails to meet these basic requirements.

First, the City fails to demonstrate an "actual controversy," because neither CDSS or HORNE have contended that TGI failed to comply with the RFA's community support and engagement requirement, and just as the City lacks a beneficial interest in enforcing CDSS's alleged duty to rescind TGI's grant, it also lacks standing as a non-party to the grant to pursue a declaration that TGI failed to meet application requirements. Second, the City's claim does not involve a proper subject of declaratory relief, as it improperly seeks (1) a declaration regarding an alleged past violation, rather than resolution of any present controversy between the parties to the grant, and (2) to control CDSS's past discretion in deciding to award a grant to TGI.

A. The City Cannot Demonstrate an Actual Controversy or Standing

The City does not allege that CDSS or HORNE have any dispute with TGI regarding its documentation of community support and engagement. To pursue declaratory relief, however, a party with an interest under a written instrument must seek resolution of an "actual controversy relating to the legal rights and duties of the respective parties." (Code Civ. Proc., § 1060.) The City's declaratory relief claim fails to meet this basic requirement.

Because the City is neither a party to the RFA or TGI's Program Funding Agreement nor an intended beneficiary of the funding agreement or TGI's grant, the City lacks standing to pursue its opposition to TGI's project by way of a declaration that TGI has failed to comply with the RFA or other program requirements. As noted above, a party must be "interested *under a written*

instrument" in declaration of the rights and duties "of the *respective parties*" to the instrument to pursue a declaration as to such rights or duties. (Code Civ. Proc., § 1060, italics added.) And, a party must otherwise demonstrate standing to request a statutory declaration of rights. (See, e.g., *Award Homes, Inc. v. County of San Benito* (2021) 72 Cal.App.5th 290, 296–297; *Berger Foundation*, *supra*, 218 Cal.App.4th at pp. 43–46.)

The City alleges that it "has an interest" in the RFA and funding agreement because they require applicants to demonstrate community engagement and support. (FAC ¶ 73.) However, as a non-party to the RFA and agreement, the City's "interest" in TGI's application alone does not suffice. A plaintiff seeking declaratory relief "bears the burden of proving that the promise he seeks to enforce was actually *made to him personally or to a class of which he is a member*." (*Berger Foundation*, *supra*, 218 Cal.App.4th at p. 43, italics added.). Thus, to demonstrate standing, the City must demonstrate that it is an "intended" or "third party" beneficiary, rather than a mere incidental beneficiary, of the instruments it seeks to enforce. (*Id*. at pp. 43–46; *Graham v. Bank of America, N.A.* (2014) 226 Cal.App.4th 594, 615.)

The City does not allege that it is an intended beneficiary of the RFA of TGI's Program Funding Agreement, nor could it. The fact that the terms of a contract "'would result in a benefit to the third party is not enough to entitle that party to demand enforcement. The contracting parties must have intended to confer a benefit on the third party.'" (*Berger Foundation*, *supra*, 218 Cal.App.4th at p. 44, quoting *Spinks v. Equity Residential Briarwood Apartments* (2009) 171 Cal.App.4th 1004, 1024.) In addition, for reasons addressed above in connection with the City's claim for a writ of mandate (Argument, § 1.A), the City fails to allege facts demonstrating that it faces any substantial and concrete, rather than conjectural, harm due to TGI's alleged failure to demonstrate community engagement and support, as necessary to support standing for declaratory relief. (*Coral Constr., Inc. v. City and County of San Francisco* (2004) 116 Cal.App.4th 6, 15.)

B. The City's Claim Improperly Seeks a Declaration Regarding "Past Acts" and to Control CDSS' Discretion

The City's claim also fails to address proper subjects of declaratory relief.

The City's request for a declaration that TGI "failed to comply" with the RFA's community engagement and support requirement focuses solely on TGI's alleged *past* noncompliance with application requirements. However, a complaint about "past acts" by a party "does not constitute an actual controversy *relating to the legal rights and duties of the respective parties* within the meaning of Code of Civil Procedure section 1060." (*City of Gilroy v. Superior Court* (2023) 96 Cal.App.5th 818, 834, italics in original, internal quotations omitted.) Declaratory relief "operates prospectively, serving to set controversies at rest before obligations are repudiated, rights are invaded or wrongs are committed." (*Monterey Coastkeeper v. Cent. Coast Reg'l Water Quality Control Bd.* (2022)76 Cal.App.5th 1, 13.) Declaratory relief, therefore, "operates to declare future rights, not to address past wrongs." (*Ibid*.) No party or intended beneficiary of the grant documents is seeking a declaration of their rights or duties. The City's request for a declaration addressing TGI's alleged "past wrong" is not a proper subject of declaratory relief.

Finally, for the same reasons addressed above in connection with the City's claim for a writ of mandate, the City's request for a declaration that TGI failed to comply with the RFA's requirements improperly seeks to control CDSS's discretion to make such a determination. (See Argument, *supra*, § I.B.3.) The City's claim, therefore, also fails in the same way to address a proper subject of declaratory relief. "The declaratory relief act does not purport to confer upon courts the authority to control administrative discretion." (*Wilson v. Transit Authority of City of Sacramento* (1962) 199 Cal.App.2d 716, 725.)

For all the independent reasons above, the Court should sustain CDSS's demurrer to the City's Fourth Cause of Action for declaratory relief without leave to amend.

CONCLUSION

For the foregoing reasons, CDSS respectfully requests that the Court grant its demurrer to the FAC's Third and Fourth Causes of Action without leave to amend absent a showing by the City that the complaint's deficiencies may be cured.

Dated: December 20, 2024

Respectfully submitted,

ROB BONTA
Attorney General of California
BENJAMIN G. DIEHL
Supervising Deputy Attorney General

/s/ *Joshua Sondheimer*
JOSHUA N. SONDHEIMER
JOSE J. RAMOS
ANTHONY C. PINGGERA
Deputy Attorneys General
Attorneys for Defendants and Respondents California Department of Social Services

SA2024304665
44448924.docx