

ADDENDUM OF MINOR CONTRACT AMENDMENT

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|-------------------------------------|---|
| AGREEMENT TITLE: | Standard City of San José Consultant Agreement |
| CONSULTANT Name and Address: | SFMade, Inc. 150 Hooper St., Unit 200 San Francisco, CA 94107 |
| DATE: | |

Pursuant to Section 4.04.020 of the San José Municipal Code the following minor amendment(s) are hereby agreed to:

☐ Extension of term:

| | |
|---------------------------------|--|
| Last approved termination date: | |
| New termination date:* | |


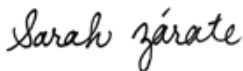
☒ Clerical correction:

Section 2, "AGREEMENT TERM", is amended and restated in its entirety as follows:


“2.1 Term: The Agreement term is from April 1, 2021 to June 30, 2023, inclusive, unless terminated earlier pursuant to Section 19 below.

2.2 Retroactive Services: The Consultant provided services before the Contract Date in anticipation of the Agreement's execution. The Director accepts and approves the services provided before the Contract Date; the City will compensate the Consultant for those services in accordance with the terms of this Agreement. However, in no event will the City compensate the Consultant for services performed before April 1, 2021.”

☐ Minor revision(s) to scope of services:

| | |
|---|--|
| APPROVED AS TO FORM: | CITY OF SAN JOSE, a municipal corporation |
|  |  |
| KEVIN FISHER Assistant City Attorney | By _____ Name: SARAH ZARATE Title: Director Date: 7/2/21 |

Consultant hereby accepts the City's amendment(s) as set forth above



By _____
Name: JANET LEES
Title: Co-Founder, Chief Operating Officer and Interim CEO
Date:

ATTACHMENT C

Standard City of San José Consultant Agreement (Exemplar)

(Non-Capital Projects)

This Agreement is between the City of San José, a municipal corporation ("City"), and SFMade Inc. ("Consultant").

This Agreement is made and entered into this 17th day of June 2021 ("Contract Date").

THE CITY AND CONSULTANT AGREE AS FOLLOWS:

1. AGREEMENT SCOPE

1.1 General: This Agreement sets forth the terms and conditions under which the Consultant will provide professional consulting services to the City. This Agreement is also subject to the terms of: (a) the July 24, 2020 Joint Agreement Between the City of San Jose, SFMade, Inc., and the San Jose Downtown Association relative to the Application and Administration of an EDA Grant; and (b) The Feb. 25 Economic Development Administration Grant to the City of San Jose, SFMade, Inc., and the San Jose Downtown Association, both of which are appended to Exhibit A as referenced below.

1.2 Exhibits: This Agreement consists of this agreement form and the following exhibits, which are incorporated herein by reference:

Exhibit A: Scope of Basic Services and July 24, 2020 Joint Agreement Between the City of San Jose, SFMade, Inc., and San Jose Downtown Association Relative to the Application and Administration of an EDA Grant; and (b) The Specific Award Conditions for Project Number 07-79-07670 issued by the U.S. Department of Commerce Economic Development Administration.

Exhibit B: Compensation

Exhibit C: Insurance Requirements

1.3 Director: "Director" means the Director of Economic Development, or the Director's designee.

1.4 Business Days: "Business Day" and "Business Days" means the day(s) on which City Hall is open to conduct business.

- 1.5 Entire Agreement:** This Agreement is the final, complete and exclusive understanding of the parties as to the matters contained herein. It supersedes all prior communications and understandings regarding such matters.
- 1.6 Amendments:** This Agreement may be modified only by a written amendment executed by the parties.

2. AGREEMENT TERM

The Agreement term is from the Contract Date to June 30, 2023, inclusive, unless terminated earlier pursuant to Section 19 below.

3. SCOPE OF SERVICES

- 3.1 Basic Services:** "Basic Services" means the services set forth in **Exhibit A**. The Consultant must perform the Basic Services to the Director's satisfaction.
- 3.2 Additional Services:** "Additional Services" means the following: (a) services that are included in the Basic Services but exceed the specified level of the Basic Services, or (b) services that relate but are not included in the Basic Services.
- 3.2.1 Authorization:** The City will not compensate Consultant for any Additional Services without the Director's prior written authorization.
- 3.2.2 Director's Authorization:** The Director may authorize the Consultant to perform Additional Services up to the cumulative, maximum amount set forth in **Exhibit B** for such services. The Director must authorize the Consultant to perform Additional Services through a written amendment executed by both parties. The written amendment must set forth the scope of the Additional Services, the schedule for completing such services, and the amount and method of compensating the Consultant for such services. The Director is authorized to execute the amendment for Additional Services for the City.

4. INTENTIONALLY OMITTED

5. CITY'S CONTRACT MANAGER

The City's contract manager for this Agreement is:

| | |
|---|--|
| Name: Nathan Donato-Weinstein | Phone No.: 408-535-8178 |
| Department: Office of Economic Development | E-mail: Nathan.donato-weinstein@sanjoseca.gov |
| Address: 200 E. Santa Clara St., 17 th Floor, San Jose CA 95113 | |

The Director can change the above contract manager by giving the Consultant written notice.

6. CONSULTANT'S STAFFING

- 6.1 Consultant's Contract Manager and Other Staffing:** Identified below are the following: (a) the Consultant's contract manager, and (b) the Consultant(s) and/or employee(s) of the Consultant who will be principally responsible for providing the Basic Services. If any individual identified below is required to file a Statement of Economic Interests, Form 700 ("Form 700"), and the individual does not have a current Form 700 on file with the City Clerk for a separate agreement with the City, the Consultant must comply with the requirements of Subsection 17.2 below.

| <u>Consultant's Contract Manager</u> | | <u>Required to File Form 700?</u> | | |
|---|-----------------------------|--|---------------------------------|-----------|
| | | Yes Already Filed (Insert Date Filed) | Yes Need to File | No |
| Name: Janet Lees | Phone No.: 415-408-5605 x 2 | | X | |
| Address: 150 Hooper St. Unit 200 San Francisco, CA 94107 | E-mail: janet@sfmade.org | | | |
| <u>Other Staffing</u> | | | | |
| <u>Name:</u> | <u>Assignment:</u> | | | |
| 1. Michael Erickson | Program Director | | X | |
| 2. Phil Lonsdale | Program Manager | | X | |
| 3. | | | | |

- 6.2 Contract Manager's Authority:** The Consultant's contract manager is authorized to act on behalf of the Consultant.
- 6.3 Staffing Changes:** The Director's prior written approval is required for the Consultant to remove, replace or add to any of its staffing identified in this provision.

7. USE OF SUBCONSULTANTS

- 7.1 Authority to Use:** Whichever of the following is marked applies to this Agreement:

- ☒ The Consultant can **not** use any subconsultants without the Director's prior written approval.
- ☐ The Consultant will use the following subconsultants for the specified areas of work. The Consultant can not remove, replace or add to any of the subconsultants identified in this provision without the Director's prior written approval.

| Subconsultant's Name | Area of Work |
|----------------------|--------------|
| 1. | |
| 2. | |
| 3. | |

- 7.2 Subconsultant Work:** The Consultant warrants all services and deliverables provided by any subconsultants it uses, and represents that each such subconsultant is specially trained, experienced, and competent to perform its portion of the work.

8. INDEPENDENT CONTRACTOR

- 8.1 General:** The Consultant has complete control over its operations and employees, and is an independent contractor. The Consultant is not an agent or employee of the City, and shall not represent or act as the City's agent or employee. The Consultant does not have any rights to retirement benefits or other benefits accruing to City employees, and expressly waives any claim it may have to any such rights.
- 8.2 Subcontractors:** As an independent contractor, the Consultant has complete control over its subconsultants, subcontractors, suppliers, agents and any other person or entity with whom the Consultant contracts in furtherance of this Agreement (collectively "Subcontractors"). Subject to the requirements of Section 7 of this Agreement, the Consultant is solely responsible for selecting, managing and compensating its Subcontractors, and for ensuring they comply with this Agreement.
- 8.3 Indemnity:** The Consultant shall place in each Subcontractor agreement indemnity obligations in favor of the City in the exact form and substance of those contained in Section 11 below.

9. STANDARD OF PERFORMANCE

The Consultant represents that it possesses all necessary training, licenses and permits needed to perform the Basic Services. The Consultant represents that its performance of the Basic Services will conform to the standard of practice of a professional that specializes in performing professional services of a like nature and complexity.

10. COMPENSATION

- 10.1 Maximum Total Compensation:** The maximum amount the City will pay the Consultant for all professional fees, costs, charges and expenses related to performing Basic Services and any Additional Services is \$287,857 ("Maximum Total Compensation").
- 10.2 Appropriation:** City's obligation to make quarterly payments under this Agreement is subject to appropriation by City.
- 10.3 Exhibit B - Compensation:** The City will pay the Consultant up to the Maximum Total Compensation in accordance with **Exhibit B**.

10.3.1 Compensation Table: **Exhibit B** sets forth a compensation table establishing the manner in which the City will pay the Maximum Compensation to the Consultant ("Compensation Table"). The Compensation Table is subject to the terms and conditions set forth below in Subsections 10.4 through 10.7.

10.3.2 Schedule of Rates and Charges: If the City will compensate the Consultant for any Basic Services on a time-and-materials basis, then **Exhibit B** also sets forth a schedule of the Consultant's rates and charges ("Schedule of Rates and Charges"). The Schedule of Rates and Charges is subject to the following requirements:

10.3.2.1 Premium Pay: "Premium Pay" is a special pay rate for working during times that are less desirable, such as weekends, holidays or late shifts. The City will not pay Consultant Premium Pay.

10.3.2.2 No Increases: The City will **not** increase the Schedule of Rates and Charges during the Agreement term.

10.3.2.3 Conflict: In the event of a discrepancy between this Section and the Schedule of Rates and Charges, this Section governs.

10.4 Compensation Table – Part 1: Part 1 of the Compensation Table addresses compensation for the various tasks included in the Basic Services. The following terms and conditions apply to Part 1 of the Compensation Table.

10.4.1 Task Numbers (Column 1): Column 1 sets forth the task number(s) for which the City will compensate the Consultant. Each task number corresponds to the same task number in **Exhibit A**. If a task number included in **Exhibit A** is not included in the Compensation Table, then the City will not compensate the Consultant separately for that task, and payment for such task is deemed included in the other task(s) for which the Consultant is receiving compensation.

10.4.2 Basis of Compensation (Column 2): Column 2 identifies whether the City will pay the Consultant for the task(s) on a time-and-materials basis or on a fixed-fee (lump-sum) basis.

10.4.3 Invoice Period (Column 3): Column 3 identifies when the Consultant must submit its invoice for payment. If invoicing is monthly, the Consultant must submit its invoice to the City by the 10th Business Day of each month for work completed during the previous month. If invoicing is upon the completion of a task or group of tasks, the Consultant must submit its invoice to the Director within 20 Business Days following completion of the task(s) to the Director's satisfaction. If invoicing is upon the completion of all work, the Consultant must submit its invoice to the Director within 20 Business Days following completion of all work to the Director's satisfaction.

10.4.3.1 Invoice: Each invoice must include sufficient information and supporting documents to establish to the Director's satisfaction that the Consultant is entitled to the payment requested. The City will pay the undisputed portion of the invoice amount within 20 Business Days of the Director's approval of such undisputed amount.

10.4.3.2 Invoices Based on Time and Materials: If time and materials is the basis of compensation, then the Consultant will base its invoice on the hours, professional fees, costs, and charges associated with the work completed

during the invoice period. If the Consultant is entitled to reimbursable expenses and/or separate payment for subconsultant costs, the invoice will include such expenses and/or costs associated with the work completed during the invoice period. The City will compensate the Consultant in accordance with the Schedule of Rates and Charges included in **Exhibit B**.

10.4.3.3 Monthly Invoices Based on Fixed Fee: If the Consultant invoices monthly for a “fixed fee,” then the Consultant will base its monthly invoice on the percentage of work completed during the previous month. If the Consultant is entitled to reimbursable expenses and/or separate payment for subconsultant costs, the invoice will include such expenses and/or costs incurred during the previous month.

10.4.4 Compensation (Column 4): Column 4 sets forth the total compensation the City will pay the Consultant for completing the task(s).

10.4.4.1 Time & Materials: If time and materials is the basis of compensation, then the amount in Column 4 is a “not-to-exceed” or maximum amount. Any hours worked for which payment would result in a total exceeding the amount in Column 4 is at no cost to the City. If the Consultant completes the task(s) for less than the amount set forth in Column 4, the Director (in the Director’s sole discretion) *may* use the cost savings to increase the budget of another task. The Director must authorize such reallocation of cost savings in writing.

10.4.4.2 Fixed Fee: If “fixed fee” is the basis of compensation, then the Consultant must complete the task(s) for the amount set forth in Column 4. Any hours worked for which payment would result in a total exceeding the amount in Column 4 are at no cost to the City.

10.5 Compensation Table – Part 2: Part 2 of the Compensation Table indicates whether or not the City will reimburse the Consultant separately for expenses incurred in providing the work. The following terms and conditions apply if the City reimburses the Consultant separately for expenses.

10.5.1 Subconsultants: The cost of subconsultants is not treated as a reimbursable expense. Subsection 10.6 of this Agreement addresses payment for the cost of subconsultants.

10.5.2 Maximum Amount of Reimbursable Expenses: The City will reimburse the Consultant for expenses up to the maximum amount set forth in the last column of Part 2. Any expenses that the Consultant incurs in excess of the stated maximum are at no cost to the City.

10.5.3 Expenses That Are Reimbursable: Any reimbursement to the Consultant is limited to the expenses set forth below in the Reimbursable Expense Schedule. The City will reimburse these expenses at actual cost only unless a markup is specified.

| Reimbursable Expense Schedule | | Mark Up |
|-------------------------------|---|-----------|
| 1. | The cost of mailing, shipping and/or delivery of any documents or materials. | No Markup |
| 2. | The cost of photographing, printing, reproducing and/or copying any documents or materials. | No Markup |

| | | |
|----|--|---------------------------------|
| 3. | Telephone and facsimile transmission charges. | No Markup |
| 4. | The rental of any specialized equipment to the extent the City's contract manager has preapproved, in writing, the cost of such rental. | As specified, not to exceed 10% |
| 5. | With the written pre-authorization of the City's contract manager, mileage and other travel-related expenses to the same extent that the City reimburses its employees pursuant to the Employee Travel Policy (City Policy Manual, Sections 1.8.2 and 1.8.3). The Consultant acknowledges that it has received a copy of Sections 1.8.2 and 1.8.3 and is familiar with these sections of the Employee Travel Policy. | No Markup |
| 6. | Any other expenses expressly identified in Exhibit B as being reimbursable. | As specified, not to exceed 10% |

10.6 Compensation Table – Part 3: Part 3 indicates whether the City will compensate the Consultant separately for subconsultant costs incurred in providing any part of the services. If the City will compensate the Consultant for subconsultant costs, the City will do so in accordance with the following terms and conditions.

10.6.1 Actual Costs: The Consultant can invoice the City for no more than the actual cost of each subconsultant plus a specified markup not to exceed 5 percent.

10.6.2 Schedule of Rates and Charges: Any subconsultant rates and charges set forth in the Schedule of Rates and Charges, if one is included in **Exhibit B**, must be the subconsultant's actual rates and charges exclusive of any markup. The City will compensate the Consultant in accordance with those rates and charges.

10.6.3 Maximum Amount: The City will compensate the Consultant for all subconsultants in a total amount not to exceed the amount set forth in the last column of Part 3. Any additional subconsultant costs that the Consultant incurs in excess of the specified maximum amount are at no cost to the City.

10.7 Compensation Table – Part 4: Part 4 sets forth the maximum compensation that the Director can authorize for Additional Services in accordance with Subsection 3.2 above. Any Additional Services performed by the Consultant that would result in compensation exceeding this maximum amount is at no cost to the City.

10.8 Tax Forms Required: The following are conditions on the City's obligation to process any payment pursuant to this Agreement:

10.8.1 U.S. Based Person or Entity: If the Consultant is a U.S. based person or entity, the Consultant acknowledges and agrees that the Consultant is required to provide the City with a properly completed Internal Revenue Service Form W-9 before the City will process payment. If the Consultant is a U.S. based person or entity, but has neither a permanent place of business in California nor is registered with the California Secretary of State to do business in California, the Consultant acknowledges and agrees that the Consultant is required to provide the City with a properly completed California Franchise Tax Board form related to nonresident withholding of California source income.

10.8.2 Non-U.S. Based Person or Entity: If the Consultant is not a U.S. based person or entity, the Consultant acknowledges and agrees that the Consultant is required to provide the City with the applicable Internal Revenue Service form related to its foreign status and a California Franchise Tax Board form related to nonresident withholding before the City will process payment.

11. INDEMNIFICATION

11.1 Obligation: The Consultant shall defend, indemnify and hold harmless the City and its officers, employees and agents against all claims, losses, damages, injuries, expenses or liabilities that – directly or indirectly, or in whole or in part - arise out of, pertain to, or relate to any of the following:

- The Consultant's negligent performance of all or any part of the Basic Services and any Additional Services; or
- Any negligent act or omission, recklessness or willful misconduct of the Consultant, any of its Subcontractors, anyone directly or indirectly employed by either the Consultant or any of its Subcontractors, or anyone that they control; or
- Any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person(s) caused by the City's use of any services, deliverables or other items provided by the Consultant pursuant to the requirements of this Agreement; or
- Any breach of this Agreement.

11.2 Limitation on Obligation: The obligation in Subsection 11.1 above shall not apply to the extent that any claim, loss, damage, injury, expense or liability results from the sole negligence or willful misconduct of the City or its officers, employees or agents.

11.3 Duty to Defend: The Consultant's obligation in Subsection 11.1 above applies to the maximum extent allowed by law and includes defending the City, its officers, employees and agents as set forth in Sections 2778 and 2782.8 of the California Civil Code. Upon the City's written request, the Consultant, at its own expense, shall defend any suit or action that is subject to the obligation in Subsection 11.1 above.

11.4 Insurance: The City's acceptance of any insurance in accordance with Section 12 does not relieve the Consultant from its obligations under this Section 11. The Consultant's obligations under this Section 11 apply whether or not the insurance required by the Agreement covers any damages or claims for damages.

11.5 Survival: The Consultant's obligations under this Section 11 survive the expiration or earlier termination of the Agreement.

12. INSURANCE REQUIREMENTS

12.1 General: The Consultant shall comply with the insurance requirements set forth in **Exhibit C** for the Agreement term.

12.2 Documentation: Before performing any services, the Consultant must submit to the City's designated risk manager ("Risk Manager"), for the Risk Manager's written approval, all documents demonstrating compliance with the requirements of **Exhibit C**.

- 12.3** **Changes:** The Risk Manager may amend or waive, in writing, any of the requirements contained in **Exhibit C**.

13. OWNERSHIP OF WORK PRODUCT

- 13.1** **Ownership:** The City owns all rights in and to any of the following work product (including electronic equivalents) without restriction or limitation upon their use, and immediately when and as created by the Consultant or any other person engaged directly or indirectly by the Consultant to perform the Consultant's services pursuant to this Agreement: reports, drawings, plans, data, software, models, documents or other materials developed or discovered (collectively "Work Product").
- 13.2** **Copyright:** To the extent permitted by Title 17 of the United States Code, the Work Product is deemed a work for hire and all copyrights in such Work Product are the property of the City. In the event it is ever determined that any Work Product is not a work for hire under United States law, the Consultant hereby assigns to the City all copyrights to such works when and as created.
- 13.3** **Intentionally Omitted.**
- 13.4** **Consultant's Reuse:** With the Director's prior written consent, the Consultant may retain and use copies of the Work Product for reference and as documentation of experience and capabilities.

14. DISCLOSURE OF WORK PRODUCT

- 14.1** **Prohibition:** Except as authorized by the Director or as otherwise required by law, the Consultant shall not disclose any of the following to a third party: (a) Work Product, (b) discussions between the City and Consultant, or (c) information prepared, developed or received by the Consultant or any of its Subcontractors in the course of performing services pursuant to this Agreement.
- 14.2** **Notification:** The Consultant will immediately notify the Director if it is requested by a third party to disclose any Work Product, discussions or information that the Consultant is otherwise prohibited from disclosing.
- 14.3** **Limit on Prohibition:** The prohibition in Subsection 14.1 above does not apply to disclosures between the Consultant and its Subcontractors that are needed to perform the Basic Services.
- 14.4** **Survival:** This Section 14 survives the expiration or earlier termination of this Agreement.

15. AUDIT/INSPECTION OF RECORDS

- 15.1 Retention Period:** The Consultant shall retain the following records (collectively "Records") for a minimum of 3 years from the date of the City's final payment to the Consultant under this Agreement or for any longer period required by law:
- All ledgers, books of accounts, invoices, vouchers, canceled checks, and other records relating to the Consultant's charges for performing services, or to the Consultant's expenditures and disbursements charged to the City; and
 - All Work Product and other records evidencing Consultant's performance.
- 15.2 Producing Records:** At any time during the Agreement term or during the period of time that the Consultant is required to retain the Records, the City Manager, the Director, the City Attorney, the City Auditor, or a designated representative of any of these officers may request, in writing, production of all or a portion of the Records. The Consultant shall produce the requested Records at City Hall during normal business hours, or at any other location and time mutually agreed upon by the parties. The Consultant shall produce the requested Records at no cost to the City.
- 15.3 State Auditor:** In accordance with Government Code Section 8546.7, the Consultant may be subject to audit by the California State Auditor with regard to the Consultant's performance of this Agreement if the compensation under this Agreement exceeds \$10,000.

16. NON-DISCRIMINATION/NON-PREFERENCE

- 16.1 Prohibition:** The Consultant shall not discriminate against, or grant preferential treatment to, any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing.
- 16.2 Intentionally Omitted.**
- 16.3 Subcontracts:** The Consultant shall include Subsection 16.1 of this Agreement in each subcontract that it enters into in furtherance of this Agreement.

17. CONFLICT OF INTEREST

- 17.1 General:** The Consultant represents that it is familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Agreement. The Consultant certifies that, as of the Contract Date, it was unaware of any facts constituting a conflict of interest or creating an appearance of a conflict of interest. The Consultant shall avoid all conflicts of interest or appearances of conflicts of interest in performing this Agreement. The Consultant has the obligation of determining if the manner in which it performs any part of this Agreement results in a conflict of interest or an appearance of a conflict of interest, and shall immediately notify the City in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest.

17.2 Filing Form 700: In accordance with the California Political Reform Act (Government Code Section 81000 et seq.), the Consultant shall cause each person performing services under this Agreement, and identified as having to file a Form 700 to do each of the following:

- Disclose the categories of economic interests in Form 700 as required by the Director;
- Complete and file the Form 700 no later than 30 calendar days after the person begins performing services under this Agreement and all subsequent Form 700s in conformance with the requirements specified in the California Political Reform Act; and
- File the original Form 700 with the City's Clerk with a copy submitted to the Director.

17.3 Future Services: The Consultant acknowledges each of the following with regard to performing future services for the City:

- The Consultant's performance of the services required by this Agreement may create an actual or appearance of a conflict of interest with regard to the Consultant performing or participating in the performance of some related **future** services, particularly if the services required by this Agreement comprise one element or aspect of a multi-phase process or project;
- Such an actual or appearance of a conflict of interest would be a ground for the City to disqualify the Consultant from performing or participating in the performance of such future services; and
- The Consultant is solely responsible for considering what potential conflicts of interest, if any, performing the services required by this Agreement might have on its ability to obtain contracts to perform future services.

18. ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY

18.1 General: The Consultant shall perform its obligations under the Agreement in conformance with City Council Policy 1-19, entitled "Prohibition of City Funding for Purchase of Single Serving Bottled Water," and City Council Policy 4-6, entitled "Environmentally Preferable Procurement Policy."

18.2 Prohibition of City Funding for Purchase of Single Serving Bottled Water: The City's policy is that City funds should not be used for the purchase of single-serving bottled water except for any of the following:

- Public safety emergencies, investigations and extended deployments or activation of the Office of Emergency Services;
- Situations where there is a high risk of cross-contamination with non-potable water; or
- Situations where there are no reasonable alternatives to bottled water, such as large public events and when large quantities of water need to be distributed for health and safety reasons.

An invoice seeking reimbursement from City for the cost of single-serving bottled water under one of the above exceptions must be accompanied by a waiver form provided by the City and signed by the Director.

18.3 Environmentally Preferable Procurement Policy: The Environmentally Preferable Procurement Policy, along with a brief policy description, is located on the City's website at the following link: <http://www.sanjoseca.gov/esd/natural-energy-resources/epp.htm>. Environmental procurement policies and activities related to the completion of Consultant's work will include, whenever practicable, but are not limited to:

- The use of recycled and/or recyclable products in daily operations (i.e. 30%, 50%, 100% PCW paper, chlorine process free, triclosan free hand cleaner, etc.);
- The use of Energy-Star Compliant equipment;
- The use of alternative fuel and hybrid vehicles, and implementation of protocols aimed at increasing the efficiency of vehicle operation;
- The implementation of internal waste reduction and reuse protocol(s); and
- Water and resource conservation activities within facilities, including bans on individual serving bottled water and the use of compostable food service products.

19. TERMINATION

19.1 For Convenience: The Director may terminate this Agreement at any time and for any reason by giving the Consultant written notice of the termination. The written notice must set forth the effective date of the termination, which must be at least 7 Business Days' after the date of the written notice.

19.2 For Cause: The Director may terminate this Agreement immediately upon written notice for any material breach by the Consultant. If the Director terminates the Agreement for cause and obtains the same services from another consultant at a greater cost, the Consultant is responsible for such excess cost in addition to any other remedies available to the City.

19.3 Delivery of Work: If the Director terminates the Agreement – whether for convenience or for cause – the Director has the option of requiring the Consultant to provide to the City any finished or unfinished Work Product prepared by the Consultant up to the date of Consultant's receipt of the written notice of termination.

19.4 Compensation: The City will pay the Consultant the reasonable value of services satisfactorily rendered by the Consultant to the City up to the date of Consultant's receipt of the written notice of termination. For services to be "satisfactorily rendered," the Director must determine that the Consultant provided them in accordance with the terms and conditions of this Agreement. The Director will determine the reasonable value of satisfactorily rendered services based on the Compensation Table and any Schedule of Rates and Charges attached to this Agreement.

19.5 Receipt of Notice: For purposes of this provision, the Consultant's receipt of the written notice of termination will be determined based on the date of actual receipt or based on Subsection 20.2 below, whichever occurs first.

20. NOTICES

- 20.1 Manner of Giving Notice:** All notices and other communications required by this Agreement must be in writing, and must be made via e-mail, personal service or United States mail, postage prepaid.
- 20.2 When Effective:** A notice or other communication that is e-mailed is effective when sent provided the sender receives an acknowledgement from the intended recipient (e.g. return receipt, return e-mail, or other written acknowledgement). A notice or other communication that is personally served is effective when personally delivered. A notice or other communication that is mailed is effective 3 calendar days after deposit in the United States mail.
- 20.3 To Whom Given:** All notices and other communications between the parties regarding the Agreement must be given to the individuals identified below using the appropriate contact information for giving notice:
- | | |
|--------------------|--|
| To the City: | City of San José Office of Economic Development Attn: Nathan Donato-Weinstein 200 E. Santa Clara St., 17 th Floor San Jose, CA 95113 nathan.donato-weinstein@sanjoseca.gov |
| To the Consultant: | SFMade Inc. Attn: Janet Lees 150 Hooper, #200 San Francisco, CA 94107 janet@sfmade.org |
- 20.4 Changing Contact Information:** Either party may change its contact information for receiving written notices and communications regarding the Agreement by providing notice of such change to the other party pursuant to this Section 20.

21. MISCELLANEOUS

- 21.1 Gifts Prohibited:** The Consultant represents that it is familiar with Chapter 12.08 of the San José Municipal Code, which generally prohibits a City officer or designated employee from accepting any gift. The Consultant shall not offer any City officer or designated employee any gift prohibited by Chapter 12.08. The Consultant's violation of this Subsection 21.1 is a material breach.
- 21.2 Disqualification of Former Employees:** The Consultant represents that it is familiar with Chapter 12.10 of the City's Municipal Code, which generally prohibits a former City officer and a former designated employee from providing services to the City connected with his/her former duties or official responsibilities. The Consultant shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10. The Consultant's violation of this Subsection 21.2 is a material breach.
- 21.3 Waiver of a Violation:** The City's waiver of any violation of this Agreement by the Consultant is not a waiver of any other violation by the Consultant.
- 21.4 Acceptance of Services Not a Waiver:** The City's acceptance of any service or deliverable is not a waiver or release of any professional duty of care applicable to such service or deliverable, or of any right of indemnification, any insurance requirements, or any other term or condition of this Agreement.

- 21.5 Compliance with Laws:** The Consultant shall perform all services consistent with all applicable federal, state and local laws, ordinances, codes and regulations. This obligation is not limited in any way by the Consultant's obligation to comply with any specific law, ordinance, code or regulation set forth elsewhere in this Agreement.
- 21.6 Business Tax:** The Consultant represents and warrants that it currently has a City business tax certificate or exemption, if qualified, and will maintain such certificate or exemption for the Agreement term.

- 21.7 Assignability:** Except to the extent this Agreement authorizes the Consultant to use subconsultants, the Consultant shall not assign any part of this Agreement without the Director's prior written consent. The Director, at the Director's discretion, may void this Agreement if a violation of this provision occurs.
- 21.8 Governing Law:** California law governs the construction and performance of this Agreement.
- 21.9 Disputes:** Any litigation resulting from this Agreement will be filed and resolved by a federal or state court in California.
- 21.10 Survival of Provisions:** If a court finds any part of this Agreement unenforceable, all other parts shall remain enforceable.
- 21.11 Headings:** The section and exhibit headings are for convenience only and are not to be used in its construction.

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IN WITNESS WHEREOF, the City and Consultant have caused this Agreement to be executed by their respective duly authorized representatives as follows.

NOTE: The Consultant must make one of the following representations by placing its initials in the space provided. **The City will not process this Agreement unless the Consultant has initialed one of the provisions.**

☒ The Consultant certifies that the Consultant has a permanent place of business in California or is registered with the California Secretary of State to do business in California. The Consultant will file a California tax return and withhold on payments of California source income to nonresidents when required. If the Consultant ceases to have a permanent place of business in California or ceases to do any of the above, the Consultant will promptly notify the City at the address specified in Subsection 20.3 of this Agreement.

Or

☐ If the Consultant is unable to make the above certification, the Consultant acknowledges and agrees to provide the City with the applicable tax forms issued by the Internal Revenue Service and California Franchise Tax Board, as applicable, as specified in Section 10.8 of this Agreement.

City of San José

By

Sarah Zarate

6/17/21

Name: Sarah Zarate
Title: Director

Date

Consultant

By

Janet Lees

5/24/2021

Name: Janet Lees
Title: Co-Founder, Chief Operating Officer and
Interim CEO

Date

Approval as to Form (City Attorney):



**Form Approved by the Office of the City
Attorney**

(Maximum Total Compensation is \$100,000 or less, and
standard provisions of the form are not altered.)

By

Name: [Insert Name.]

Date

Title: [Insert Title of Signature.]



Approved as to Form:

Kevin Fisher

6/4/2021

[Sr.] Deputy City Attorney

Date

EXHIBIT A: SCOPE OF BASIC SERVICES

(Non-Capital Projects)

The Consultant shall provide services and deliverables as set forth in this **Exhibit A**. The Consultant shall provide all services and deliverables required by this **Exhibit A** to the satisfaction of the Director.

General Description of Project: Manufacturing support component of Economic Development Administration-funded COVID-19 economic recovery grant program. Through this program, SFMade, through Manufacture: San Jose sister organization, will support the recovery of San Jose manufacturers through training, advisory services, workforce and hiring assistance. The task descriptions below are in alignment with the scope that was approved by EDA and are subject to the terms of the July 24, 2020 Joint Agreement Between the City of San Jose, SFMade, Inc., and San Jose Downtown Association Relative to the Application and Administration of an EDA Grant; and (b) The Feb. 25 Economic Development Administration Grant to the City of San Jose, SFMade, Inc., and San Jose Downtown Association, both as attached hereto.

Task No. 1: Manufacturing Business Support

- A. Services:** Consultant will provide a suite of services to San Jose manufacturing companies to assist them in recovering from the economic impact of COVID-19. In alignment with the activities detailed in the EDA Grant, the program will include services such as one-on-one advising, relevant educational workshops, operational support, resource referrals, and business-planning support. Consultant will focus on communities hardest hit by COVID-19 primarily in downtown, Central and East San Jose, as outlined in the EDA grant application.
- B. Deliverable:** Provision of quarterly reports detailing activities including the names of businesses assisted, types of services provided, and any outcomes realized or anticipated.
- C. Completion Time:** The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:
- ☒ On or before the following date: June 30, 2023.
- ☐ On or before ____ Business Days from _____.

Task No. 2: Manufacturing Hiring and Workforce Services

- A. Services:** Consultant will establish a program designed to assist San Jose manufacturing companies hire and retain workers. Services shall include recruitment services for entry-level positions; career exposure for youth and skills training; workforce planning; and guidance on available workforce subsidies. The program shall also directly connect job-seekers to workforce partners, produce regular "Careers in Manufacturing" workshops, and partner with community and neighborhood organizations to identify, support, and connect individuals from underserved neighborhoods.
- B. Deliverable:** Provision of quarterly reports detailing activities including the names of businesses assisted, types of services provided, and outcomes realized or anticipated.
- C. Completion Time:** The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:
- ☒ On or before the following date: June 30, 2023.
- ☐ On or before ____ Business Days from _____.

**JOINT AGREEMENT BETWEEN THE CITY OF SAN JOSE, SFMADE, INC., AND
SAN JOSE DOWNTOWN ASSOCIATION RELATIVE TO THE APPLICATION AND
ADMINISTRATION OF AN EDA GRANT**

THIS AGREEMENT is made and entered into this 24TH day of July 2020 ("Effective Date"), by and between the CITY OF SAN JOSE, a municipal corporation (hereinafter "CITY"), SFMADE, INC., a California non-profit public benefit corporation, and SAN JOSE DOWNTOWN ASSOCIATION, a California non-profit mutual benefit corporation (hereinafter "PARTIES").

WHEREAS, the PARTIES intend to submit a joint application to the Economic Development Administration (EDA) in July 2020 for a CARES Act EDA grant for the project entitled San José EDA CARES Act Small Business and Manufacturing Recovery and Resiliency Effort; and

WHEREAS, the PARTIES desire to establish their roles and responsibilities relative to the application and administration of the grant;

THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1. PROGRAM SCOPE AND SERVICES.

PARTIES shall perform those services specified in detail in EXHIBIT A, entitled "PROGRAM SCOPE", which is attached hereto and incorporated herein.

SECTION 2. PARTIES RESPONSIBILITIES.

- A. The CITY shall be responsible for filing the EDA grant application and filing the EDA project reports.
- B. The CITY shall be designated to receive and distribute grant funds and file EDA financial reports.
- C. The CITY shall be responsible for funding the 20% EDA match requirement.
- D. The PARTIES agree and understand that they will be bound by the EDA grant application forms and award documents that they execute and the applicable statutes and regulations, and agree to individually submit the EDA required application materials.
- E. The PARTIES shall submit this AGREEMENT to the EDA.
- F. The PARTIES shall promptly notify the EDA of any changes to this AGREEMENT.

SECTION 3. TERM OF AGREEMENT.

The term of this AGREEMENT shall be from the Effective Date to 24 months after the award of the EDA grant, subject to the provisions of SECTION 9 of this AGREEMENT.

SECTION 4. SCHEDULE OF PERFORMANCE.

The services of the PARTIES are to be completed according to the schedule set out in EXHIBIT B, entitled "PROGRAM SCHEDULE", which is attached hereto and incorporated herein. Time is of the essence in this AGREEMENT.

SECTION 5. ASSIGNABILITY.

The PARTIES agree that the expertise and experience of the PARTIES are material considerations for this AGREEMENT. The PARTIES shall not assign or transfer any interest in this AGREEMENT nor the performance of any of the PARTIES' obligations hereunder, without the prior written consent of all PARTIES, and any attempt by the PARTIES to assign this AGREEMENT or any rights, duties or obligations arising hereunder shall be void and of no effect.

SECTION 6. INDEMNIFICATION.

- A. The PARTIES agree to defend, indemnify and hold harmless the CITY from and against any and all claims, demands, causes of action, or liabilities incurred by CITY arising from, in whole or in part, directly or indirectly, PARTIES' acts or omissions under this AGREEMENT, except as may arise from the gross negligence or willful misconduct of CITY. In any action or claim against CITY in which PARTIES are defending CITY, CITY shall have the right to approve legal counsel providing CITY's defense and such approval shall not be unreasonably withheld. PARTIES further agree to release CITY from any and all claims for any damages, including property damage, injury or death occurring or arising out of use of CITY's property, except as may be caused by the CITY's gross negligence or willful misconduct.
- B. The PARTIES' obligations under this indemnification provision shall survive the expiration or termination of this AGREEMENT.

SECTION 7. INSURANCE REQUIREMENTS.

The PARTIES agree to have and maintain the policies set forth in EXHIBIT C, entitled "INSURANCE REQUIREMENTS," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Director of Finance or the Director's authorized designee ("Risk Manager") of the City of San José as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. The PARTIES agree to provide CITY with a copy of said policies, certificates and/or endorsements before work commences under this AGREEMENT.

SECTION 8. NONDISCRIMINATION.

The PARTIES shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this AGREEMENT.

SECTION 9. TERMINATION.

- A. If either SFMADE, INC. or the SAN JOSE DOWNTOWN ASSOCIATION or both fail to perform any of its material obligations under this AGREEMENT, in addition to all other

remedies provided by law, this AGREEMENT may be terminated by the CITY immediately upon ten (10) days written notice.

- B. CITY'S DIRECTOR OF ECONOMIC DEVELOPMENT is empowered to terminate this AGREEMENT on behalf of CITY.
- C. In the event of termination, SF MADE, INC. and SAN JOSE DOWNTOWN ASSOCIATION shall deliver to the CITY copies of all reports, documents, and other work performed by the PARTIES under this AGREEMENT.

SECTION 10. GOVERNING LAW AND VENUE.

The PARTIES agree that this AGREEMENT shall be governed and construed in accordance with the laws of the State of California. In the event that suit shall be brought by either party to this AGREEMENT, the PARTIES agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San José, California.

SECTION 11. COMPLIANCE WITH LAWS.

The PARTIES shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments and with applicable CITY policies. Without limiting the generality of the preceding sentence, the PARTIES shall comply with the provisions of CITY's Business Tax Ordinance in Chapter 4.76 of the San José Municipal Code.

SECTION 12. CONFIDENTIAL INFORMATION.

All data, documents, discussions or other information developed or received by or for the PARTIES in performance of this AGREEMENT are confidential and not to be disclosed to any person except as authorized by the CITY, or as required by law. The PARTIES recognize and acknowledge that the CITY is subject to and governed by the California Public Records Act, and that absent legal exemption to disclosure, records in the possession of or used by the CITY are subject to disclosure upon request.

SECTION 13. WAIVER.

The PARTIES agree that waiver by the CITY of any breach or violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance of the performance of any work or services by the PARTIES shall not be deemed to be a waiver of any term or condition of this AGREEMENT.

SECTION 14. PARTIES' BOOKS AND RECORDS.

- A. The PARTIES shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged for a minimum period of three (3)

- years, or for any longer period required by law, from the date of final payment to the PARTIES pursuant to this AGREEMENT.
- B. Where the CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of the PARTIES' business, CITY may, by written request by any of the above-named officers, require that custody of the records be given to CITY and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by the PARTIES', the PARTIES' representatives, or the PARTIES' successor-in-interest.
 - C. The PARTIES shall maintain all documents and records which demonstrate performance under this AGREEMENT for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this AGREEMENT.
 - D. Any records or documents required to be maintained pursuant to this AGREEMENT shall be made available for inspection or audit at no cost to the CITY, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to the CITY for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at the PARTIES' addresses indicated for receipt of notices in this AGREEMENT. The PARTIES acknowledge that under certain circumstances specified in California Government Code Section 8546.7, this AGREEMENT (if it involves an expenditure of \$10,000 or more of public funds) may be subject to examination and audit by the Auditor of the State of California pursuant to California Government Code Section 8546.7

SECTION 15. CONFLICT OF INTEREST.

The PARTIES shall comply with the applicable provisions of the Political Reform Act of 1974, as amended, relating to conflicts of interest (codified in California Government Code Section 87000, et seq.), with the conflict of interest provisions of Government Code Section 1090 et seq. and with the CITY's Code of Ethics, set forth in City Council Policy 0-15. The PARTIES shall promptly advise CITY of the facts and circumstances concerning any disclosure made to it or any information obtained by it relating to conflicts of interest.

SECTION 16. GIFTS.

- A. The PARTIES are familiar with CITY's prohibition against the acceptance of any gift by a CITY officer or designated employee, which prohibition is found in Chapter 12.08 of the San José Municipal Code.
- B. The PARTIES agree not to offer any CITY officer or designated employee any gift prohibited by said Chapter.
- C. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this AGREEMENT by the PARTIES. In addition to any other remedies CITY may have in law or equity, CITY may terminate this AGREEMENT for such breach as provided in SECTION 9 of this AGREEMENT.

SECTION 17. DISQUALIFICATION OF FORMER EMPLOYEES.

The PARTIES are familiar with Chapter 12.10 of the City's Municipal Code, which generally prohibits a former City officer and a former designated employee from providing services to the City connected with his/her former duties or official responsibilities. The PARTIES shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10. The PARTIES' violation of this Section 17 is a material breach.

SECTION 18. NOTICES.

All notices and other communications required or permitted to be given under this AGREEMENT shall be in writing and shall be sent via electronic mail, be personally served or mailed, postage prepaid, to the PARTIES at the following addresses:

| | |
|--------------------------------------|---|
| TO CITY: | Melina Iglesias Senior Executive Analyst Melina.Iglesias@sanjoseca.gov 200 E. Santa Clara Street San José, CA 95113 |
| TO SFMADE, INC.: | Kate Sofis Chief Executive Officer kate@sfmade.org 150 Hooper Street, #200 San Francisco, CA 94107 |
| TO SAN JOSE DOWNTOWN ASSOCIATION: | Scott Knies Executive Director sknies@sjdowntown.com 28 N 1st Street, #1000 San José, CA 95113 |

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

SECTION 19. EXCEUTION OF COUNTERPARTS.

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

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

APPROVED AS TO FORM:

Ed Moran
Ed Moran (Jul 23, 2020 11:00 AKDT)

ED MORAN,
ASSISTANT CITY ATTORNEY

“PARTIES”:

CITY OF SAN JOSE, A Municipal Corporation



Dated: 7/24/2020

Leland Wilcox, Chief of Staff
Office of the City Manager,
City of San José

SFMADE, INC., A California Non-Profit
Public Benefit Corporation

Dated:

Kate Sofis
Chief Executive Officer, SFMade, Inc.

SAN JOSE DOWNTOWN ASSOCIATION, A
California Non-Profit Mutual Benefit
Corporation

Dated:

Scott Knies
Executive Director, San José Downtown
Association

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

APPROVED AS TO FORM:

ED MORAN,
ASSISTANT CITY ATTORNEY

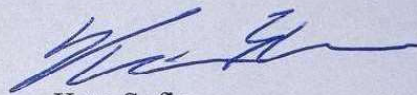
“PARTIES”:

CITY OF SAN JOSE, A Municipal Corporation

Dated:

Lee Wilcox, Chief of Staff
Office of the City Manager,
City of San José

SFMADE, INC., A California Non-Profit
Public Benefit Corporation



Dated:

7/22/20

Kate Sofis
Chief Executive Officer, SFMade, Inc.

SAN JOSE DOWNTOWN ASSOCIATION, A
California Non-Profit Mutual Benefit
Corporation

Dated:

Scott Knies
Executive Director, San José Downtown
Association

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

APPROVED AS TO FORM:

ED MORAN,
ASSISTANT CITY ATTORNEY

“PARTIES”:

CITY OF SAN JOSE, A Municipal Corporation

Dated:

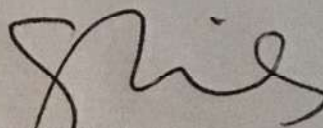
Lee Wilcox, Chief of Staff
Office of the City Manager,
City of San José

SFMADE, INC., A California Non-Profit
Public Benefit Corporation

Dated:

Kate Sofis
Chief Executive Officer, SFMAde, Inc.

SAN JOSE DOWNTOWN ASSOCIATION, A
California Non-Profit Mutual Benefit
Corporation



Scott Knies
Executive Director, San José Downtown
Association

Dated: 7/22/20

SPECIFIC AWARD CONDITIONS
U.S. DEPARTMENT OF COMMERCE
Economic Development Administration (EDA)

NON-CONSTRUCTION PROJECTS: Economic Adjustment Assistance, Short Term Planning, and Technical Assistance (both University Centers and Local Technical Assistance) Programs under Sections 203, 207 and 209 of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. §§ 3143, 3147 and 3149

The terms “Specific Award Conditions” and “Special Award Conditions” shall have the same meaning for purposes of this document, the Department of Commerce Financial Assistance Standard Terms and Conditions, and any other document that makes reference to these terms in the Award.

| | |
|---|------------------------------------|
| Project Title: Small Business and Manufacturing Recovery and Resiliency Initiative | |
| Recipient Name: City of San Jose | Project Number: 07-79-07670 |

1. This EDA Award supports the work described in the approved final scope of work, which is incorporated by reference into this Award, as the *Authorized Scope of Work*. All work on this project must be consistent with the *Authorized Scope of Work*, unless the Grants Officer has authorized a modification of the scope of work in writing through an amendment memorialized by a fully executed *Amendment to Financial Assistance Award* (Form CD-451).

The *Authorized Scope of Work* for The San Jose Small Business and Manufacturing Recovery Initiative includes:

1. San Jose Small Business Recovery Outreach, Support and Investment
 - *Lead: City of San Jose and Consultant Services.* The suite of programs in this section will build on business-assistance work already initiated by the City and its partners but re-frame and expand these services with a focus on building resiliency.
 - *Business Technical Assistance.* Consultant services for two technical assistance providers to provide training to small businesses in the following types of subject matter areas to better equip them to recover from COVID-19, pivot their business and survive future crises. Service providers will have cultural and language competencies to serve vulnerable populations in the proposed project area. In general a staff member would be expected to complete intense work with 75+ businesses/entrepreneurs the first year.
 - *Neighborhood Business Recovery Outreach and Engagement.* Consultant services to engage with local businesses in targeted geographies harmed by COVID-19 to aid businesses in re-opening, attraction/retention efforts, technical-service referrals, creation of business directories, advocacy and

neighborhood resilience. This program anticipates two providers. The natural fit for this type of program would be business associations within Neighborhood Business Districts, and the overall goal is to enhance neighborhood business networks and create a pipeline to Business Technical Assistance Providers above.

- *San Jose Opportunity Zone Small Business and Manufacturing Study.* The program area contains several federally designated Opportunity Zones, with key small-business and manufacturing districts within them. Investment in these areas would help recovery from the COVID-19 recession. This feasibility study will focus on opportunity fund investing in startups and industrial/manufacturing projects within these areas. It is designed to raise awareness of marketability for these types of investments, which are under-studied nationally.

2. San Jose Manufacturing Recovery Initiative.

- *Lead: Manufacture: San Jose and City of San Jose.* This manufacturing recovery outreach initiative will take Manufacture; San Jose's current capacity and center it on supporting manufacturers from the city neighborhoods most impacted by the COVID-19 crisis so that they can recover, re-open, re-build, and re-hire. This initiative will focus on manufacturing businesses owned by people of color and those who employ individuals from the impacted neighborhoods. It consists of a core support function and another program element focused on workforce and hiring/re-hiring.

- *Manufacturing Business Support*
- *Manufacturing Hiring and Workforce Services*

3. San Jose Downtown Association (SJDA) Business Development and Support Services

- *Lead: San Jose Downtown Association and City of San Jose.* Initiative consists of two components: 1) assisting downtown businesses recover from the economic devastation of COVID-19, and 2) mentoring other impacted business associations to increase their capacity to serve small businesses and increase the reach and effectiveness of the overall program. The program would fund one new staff position at SJDA who would split these program elements and responsibilities.

- *Program Element 1: Downtown Business Recovery Description:* Address the unmet needs of downtown's diverse business and property owners as they rebound from the COVID economic downturn. This intensive outreach initiative will also focus on business retention and recovery to address the growing commercial vacancies in key downtown corridors.
- *Program Element 2: Business District Resilience.* This program element will build capacity in neighborhood business districts while creating a bridge to these historically underserved communities for the technical assistance resources being developed under the overall recovery program. The City's most successful geographically based business association, the SJDA will partner with these organizations and mentor them as they move from informal or part time organizations to a robust business support network. The SJDA Business District Resilience component will provide leadership development, mentorship, and programming support to two business support organizations within the program area. The goal is to

help these organizations increase their capacity to deliver services effectively, efficiently and at scale to small businesses throughout the program area, increasing the reach and scope of the program.

2. The Recipient Contact's name, title, address, and telephone number are:

| | |
|--|--|
| Nathan Donato-Weinstein Senior Executive Analyst Phone: (408) 535-8178 Email: Nathan.donato-weinstein@sanjoseca.gov | City of San Jose 200 E Santa Clara St San Jose, CA 95113 |
| Scott Knies Executive Director Phone: (408) 279-1775 Email: sknies@sjdowntown.com | San Jose Downtown Association 28 N. 1st St., Suite 1000 San Jose, CA 95113 |
| Kate Sofis CEO Phone: (415) 987-7004 Email: kate@sfmade.org | SF Made 150 Hooper Unit 200 San Francisco, CA 95107 |

3. The Grants Officer is authorized to award, amend, suspend, and terminate financial assistance awards. The Grants Officer is:

| | |
|---|--|
| Kerstin Millius Acting Regional Director Phone: (202) 420-0306 Email: KMillius@eda.gov | Economic Development Administration Seattle Regional Office 915 Second Avenue, Room 1890 Seattle, Washington 98174-1012 |
|---|--|

4. The Federal Program Officer (Area Director) oversees the programmatic aspects of this Award. The Federal Program Officer is:

| | |
|---|--|
| Richard Berndt Acting Area Director Phone: (206) 919-1702 Email: RBerndt@eda.gov | Economic Development Administration Seattle Regional Office 915 Second Avenue, Room 1890 Seattle, Washington 98174-1012 |
|---|--|

5. The EDA Project Officer is responsible for day-to-day administration and liaison with the Recipient and receives all reports and payment requests. The Project Officer is:

| | |
|--|--|
| Natasha Rivera Economic Development Specialist Phone: (206) 475-0659 Email: NRivera@eda.gov | Economic Development Administration Seattle Regional Office 915 Second Avenue, Room 1890 Seattle, Washington 98174-1012 |
|--|--|

6. **CONTACT CHANGES:** Changes to the contact information above may be made in writing by the EDA Project Officer without an amendment on Form CD-451.

7. **ADDITIONAL INCLUDED DOCUMENTS:** In addition to the regulations, documents, or authorities incorporated by reference on the *Financial Assistance Award* (Form CD-450), the following additional documents are hereby incorporated by reference into this Award:

- The Recipient’s application, including any attachments, project descriptions, schedules, and subsequently submitted supplemental documentation; and
- Instructions on how to enroll and access funds in ASAP (Attachment 1).
- Authorized Staffing Plan (Attachment 2)

Should there be a discrepancy among these documents, the Specific Award Conditions (this document), including any attachments, shall control.

8. **PROJECT DEVELOPMENT TIME SCHEDULE:** The Recipient agrees to the following Project Development Time Schedule:

| | |
|--|--|
| Return of Executed Financial Assistance Award..... | No later than 30 calendar days after receipt of Form CD-450/CD-451 |
| Submission of Final Project Progress Report..... | April 30, 2023 |
| Authorized Award End Date..... | March 31, 2023 |
| Submission of Final Financial Documents (Form SF-425) | No later than 120 calendar days from the Award End Date |

The Recipient shall diligently pursue the development and implementation of the project upon receipt of the EDA Award so as to ensure completion within this time schedule and shall promptly notify EDA in writing of any event which could substantially delay meeting any of the prescribed time limits for the project as set forth above. The Recipient further acknowledges that failure to meet the development time schedule may result in EDA taking action to terminate the Award in accordance with the regulations set forth at 2 CFR §§ 200.338–200.342, as applicable.

9. **PROJECT REPORTING AND FINANCIAL DISBURSEMENTS INSTRUCTIONS:**

A. **AWARD DISBURSEMENTS: Reimbursement basis only.** EDA will make disbursements using the Department of Treasury’s Automated Standard Application for Payments (ASAP) system. The Recipient is required to furnish documentation required by ASAP. Complete information concerning the ASAP system may be obtained by visiting www.fms.treas.gov/asap.

In order to receive disbursements, the Recipient must submit a “*Request for Advance or Reimbursement*” (Form SF-270 or any successor form) for the applicable period electronically to the Project Officer, who will review and process the request.

Please note that prior to the initial disbursement, the Recipient must complete the attached Form SF-3881 (or any successor form) “*ACH Vendor/Miscellaneous Payment Enrollment Form*” and submit it to NOAA’s Accounting Office by FAX at (301) 528-3675. (*FAX is required to secure confidentiality of sensitive information.*) The form must be completed by the respective parties (EDA, Recipient Bank, and Recipient) at the start of each new award.

B. REPORTS:

- a. *Project Progress Reports*: The Recipient agrees to provide the Project Officer with project progress reports, which will communicate the important activities and accomplishments of the project, on a semi-annual basis for the periods ending **March 31** and **September 30**, or any portion thereof, for the entire period of performance. Reports are due no later than 1 month following the end of the semi-annual period.

Performance progress reports should be submitted to EDA in an electronic format no later than the dates outlined above in a concise, clear format, and containing the following information in no more than 3-6 pages in length:

- i. Provide a clear, concise overview of the activities undertaken during the semi-annual reporting period;
- ii. Document accomplishments, benefits, and impacts that the project and activities are having. The Recipient should note where activities have led to specific outcomes such as job creation/retention, private investment, increased regional collaboration, engagement with historically excluded groups or regions, enhanced regional capacity, and other positive economic benefits;
- iii. Highlight any upcoming or potential press events or opportunities for collaborative press events that would highlight the benefits of the EDA investment;
- iv. Compare progress with the project timeline, explaining any departures from the targeted schedule, identifying how these departures are going to be remedied, and projecting the course of work for the next semi-annual reporting period;
- v. Outline challenges that currently impact or could impact progress on the Award over the next semi-annual reporting period and identify ways to mitigate this risk; and
- vi. Outline any areas where EDA assistance is needed to support the project or any other key information that would be helpful for your EDA Project Officer to know.

Final Project Reports may be posted on EDA’s website, used for promotional materials or policy reviews, or may be otherwise shared. Recipients should not include any copyrighted or other sensitive business information in these reports.

There is no specific page limit for Final Project Reports; however, such reports should concisely communicate key project information, and should:

- i. Outline the specific regional need that the project was designed to address and update progress made during the award period that will mitigate need and advance economic development;
 - ii. Provide a high-level overview of the activities undertaken;
 - iii. Detail lessons learned during the period of performance that may be of assistance to EDA or other communities undertaking similar efforts;
 - iv. Outline the expected and actual economic benefits of the project as of the time that the report is written; and
 - v. Any other key information from the project.
- b. *Financial Reports:* The Recipient shall submit a “*Federal Financial Report*” (Form SF-425 or any successor form) on a semi-annual basis for the periods ending **March 31** and **September 30**, or any portion thereof, for the entire period of performance. Form SF-425 and instructions for completing this form are available at: <https://www.grants.gov/web/grants/forms/post-award-reporting-forms.html>. Reports are due no later than 1 month following the end of the semi-annual period.

A final Form SF-425 must be submitted no more than 90 calendar days after the expiration date of the Award (*i.e.*, the Award End Date specified on the Form CD-450 or a subsequently executed Form CD-451). Final Financial Reports should follow the guidance outlined in the instructions for submitting mid-term financial reports, but should ensure that all fields accurately reflect the total outlays for the entire period of performance and that all matching funds and program income (if applicable) are fully reported. Determination of the final grant rate and final balances owed to the government will be determined based on the information on the final Form SF-425, so it is imperative that it be submitted in a timely and accurate manner.

10. ALLOWABLE COSTS AND AUTHORIZED BUDGET: Total allowable costs will be determined after the final financial documents are submitted in accordance with the applicable authorities specified on the *Financial Assistance Award* (Form CD-450), including the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200.

Line Item Budget:

A. Under the terms of the Award, the total approved/authorized budget is:

| | |
|----------------------------|-------------|
| Federal Share (EDA) | \$1,171,579 |
| Non-Federal Matching Share | \$390,526 |
| Total Project Cost | \$1,562,105 |

B. Under the terms of this Award, the total approved line item budget is:

| Item | Federal Share | Non-Federal Share | Total |
|----------------------|---------------|-------------------|-------------|
| 1. Personnel | \$432,639 | \$188,946 | \$621,585 |
| 2. Fringe Benefits | \$76,494 | \$113,112 | \$189,606 |
| 3. Travel | \$0 | \$0 | \$0 |
| 4. Equipment | \$0 | \$0 | \$0 |
| 5. Supplies | \$0 | \$0 | \$0 |
| 6. Contractual | \$611,533 | \$88,468 | \$700,001 |
| 7. Construction | \$0 | \$0 | \$0 |
| 8. Other | \$0 | \$0 | \$0 |
| Total Direct Charges | \$1,120,666 | \$390,526 | \$1,511,192 |
| 9. Indirect Charges | \$50,913 | \$0 | \$50,913 |
| Total Project Cost | \$1,171,579 | \$390,526 | \$1,562,105 |

11. FEDERAL SHARE: The EDA participation in total eligible project costs will be limited to the EDA grant amount or the EDA share of total allowable project costs, based on the area's grant rate eligibility at the time of award, whichever is less.

12. MATCHING SHARE: The Recipient agrees to provide the Recipient's non-Federal Matching Share contribution for eligible project expenses in proportion to the Federal share requested for such project expenses. By accepting the Award, the Recipient also certifies that the Matching Share of the project costs is committed to the project, is not encumbered in any way that would prevent its use for the project, and will be available as needed for the project.

13. REFUND CHECKS, INTEREST, OR UNUSED FUNDS: Treasury has given EDA two options for having payments deposited to EDA's account:

- A. The first is the pay.gov website. This option allows the payee to pay EDA through the internet. The payee will have the option to make a one-time payment or to set up an account to make regular payments.
- B. The second is paper check conversion. All checks must include on their face the name of the DOC agency funding the Award, the award number, and a description of no more than two words identifying the reason for the refund or check. A copy of the check should be provided to the EDA Project Officer. This option allows the payee to send a check to NOAA's Accounting Office, which processes EDA's accounting functions, at the following address:

U.S. Department of Commerce
National Oceanic and Atmospheric Administration
Finance Office, AOD, EDA Grants
20020 Century Boulevard
Germantown, MD 20874

The accounting staff will scan the checks in to an encrypted file and transfer the file to the Federal Reserve Bank, where the funds will be deposited in EDA's account. While this process will not be an issue with most payees, there are occasionally issues for entities remitting funds to EDA via check. If you are remitting funds to EDA via check, please make note of the following:

- If a check is sent to EDA, it will be converted into an electronic funds transfer by copying the check and using the account information to electronically debit your account for the amount of the check. The debit from your account will usually occur within 24 hours and will appear on your regular account statement.
- EDA will not return your original check; the original will be destroyed and a copy will be maintained in our office. If the Electronic Funds Transfer (EFT) cannot be processed for technical reasons, the copy will be processed in place of the original check. If the EFT cannot be completed because of insufficient funds, EDA will charge you a one-time fee of \$25.00, which will be collected by EFT.

14. PLANNING COORDINATION: In keeping with regional economic development principles, the Recipient should coordinate economic development planning and implementation projects with other economic development organizations affecting the area, especially EDA-funded recipients such as State and Urban planning grantees, adjoining Economic Development Districts (EDDs) and Indian Tribes, and University Centers (UCs).

15. PROCUREMENT: The Recipient agrees that all procurement transactions shall be in accordance with the Procurement Standards of the Uniform Guidance as set out at 2 CFR part 200 and the EDA regulations contained in 13 CFR Chapter III, especially 13 CFR part 305 and 13 CFR § 302.17 ("Conflicts of Interest").

16. NONRELOCATION: By accepting this Award of financial assistance, the Recipient attests that EDA funding is not intended by the Recipient to assist efforts to induce the relocation or the movement of existing jobs from one region to another region in competition with those jobs. In the event that EDA determines that its assistance was used for such purposes, EDA reserves the right to pursue appropriate enforcement actions, including suspension of disbursements, termination of the Award for convenience or cause (which may include the establishment of a debt requiring the Recipient to reimburse EDA), and disallowance of any costs attributable, directly or indirectly, to the relocation.

17. PERFORMANCE MEASURES: The Recipient agrees to report on program performance measures and program outcomes in such form and at such intervals as may be prescribed by EDA in compliance with the Government Performance and Results Act (GPRA) of 1993, and the Government Performance and Results Modernization Act of 2010. The Recipient must retain sufficient documentation so that they can submit these required reports. Failure to submit these required reports may adversely impact the ability of the Recipient to secure future funding from EDA.

Performance measures and reporting requirements that apply to program activities funded by this investment will be provided in a separate GPRA information collection document, if applicable. EDA staff will contact the Recipient in writing within a reasonable period prior to the time of submission of the reports with information on how this data should be submitted.

18. REAFFIRMATION OF APPLICATION: Recipient acknowledges that Recipient's application for this Award may have been submitted to the Government and signed by Recipient, or by an authorized representative of Recipient, electronically. Regardless of the means by which Recipient submitted its application to the Government or whether Recipient or an authorized representative of Recipient submitted its application to the Government, the Recipient hereby reaffirms and states that:

- A. All data in the application and documents submitted with the application are true and correct as of the date the application was submitted and remain true and correct as of the date of this Award;
- B. The application was, as of the date of submission and the date of this Award, duly authorized as required by local law by the governing body of the Recipient; and
- C. Recipient has read, understood, and will comply with all terms of this Award, including the Assurances and Certifications submitted with, or attached to, the application.

The term "application" includes all documentation and any information provided to the Government as part of, and in furtherance to, the request for funding, including submissions made in response to information requested by the Government after submission of the initial application.

19. WASTE, FRAUD AND ABUSE: Consistent with 2 CFR part 200, at EDA's direction, at any time(s) during the estimated useful life of the Project, Recipient's key personnel will take a training on preventing waste, fraud and abuse as provided by the Government. Key personnel include those responsible for managing the Recipient's finances and overseeing any contractors, sub-contractors, or subrecipients (for financial matters and/or general oversight related to this Project). EDA will provide instructions on when and how to take the training. Within sixty days of accepting the EDA Financial Assistance Award, the Recipient shall provide to the Project Officer all Certificates of Completion for the Waste, Fraud, and Abuse training. In the event there are co-recipients of this Award, the obligations in the Specific Award Condition shall apply to all recipients whether or not designated in this Award as the Lead Recipient.

Further, Recipient will monitor award activities for common fraud schemes (hereinafter "Fraud Schemes"), such as but not limited to:

- false claims for materials and labor,
- bribes related to the acquisition of materials and labor,

- product substitution,
- mismarking or mislabeling on products and materials, and
- time and materials overcharging.

Should Recipient detect any Fraud Schemes or any other suspicious activity, Recipient will contact the EDA staff listed above and the Department of Commerce, Office of Inspector General, as indicated at <https://www.oig.doc.gov/Pages/Contact-Us.aspx>, as soon as possible.

- 20. FREEDOM OF INFORMATION ACT (FOIA):** EDA is responsible for meeting its Freedom of Information Act (FOIA) (5 U.S.C. § 552) responsibilities for its records. DOC regulations at 15 CFR part 4 set forth the requirements and procedures that EDA must follow in order to make the requested material, information, and records publicly available. Unless prohibited by law and to the extent required under the FOIA, contents of applications and other information submitted by applicants and recipients may be released in response to a FOIA request. The Recipient should be aware that EDA may make certain application information publicly available. Accordingly, the Recipient should notify EDA if it believes any Application information to be confidential.
- 21. STAFFING CHANGES:** In the event of a change in the key professional staff positions related to project management, the Recipient shall provide the name of the individual selected to fill the position to the Project Officer and a copy of his or her resume within thirty (30) business days of the selection.
- 22. TECHNICAL ASSISTANCE TO BUSINESSES:** Recipient shall advertise and make accessible any technical assistance offered to businesses as intended beneficiaries under this Award as widely as is reasonably permitted under the terms of this Award. Recipient shall maintain adequate documentation of any technical assistance offered and/or provided to benefitting businesses under this Award.
- 23. MULTIPLE RECIPIENTS:** This Award is made to multiple Recipients. Any reference to the term “Recipient” means all Recipients listed on the Financial Assistance Award Form CD-450 as may be amended.

EXHIBIT B: COMPENSATION

Section 1 – Compensation Table

| Part 1 – Compensation for Basic Services | | | | |
|--|--|---|--|-----------------------|
| Column 1 | Column 2 | Column 3 | Column 4 | Column 5 |
| Task Nos. | Basis of Compensation | Invoice Period | Compensation – Year 1 | Compensation – Year 2 |
| 1 | <input type="checkbox"/> Time & Materials <input checked="" type="checkbox"/> Fixed Fee | <input checked="" type="checkbox"/> Quarterly <input type="checkbox"/> Competition of Task(s) | <input type="checkbox"/> Competition of Work \$72,040 | \$71,888 |
| 2 | <input type="checkbox"/> Time & Materials <input checked="" type="checkbox"/> Fixed Fee | <input checked="" type="checkbox"/> Quarterly <input type="checkbox"/> Competition of Task(s) | <input type="checkbox"/> Competition of Work \$72,040 | \$71,889 |
| Part 2 – Reimbursable Expenses | | | | |
| <input checked="" type="checkbox"/> No expenses are separately reimbursable. The amount(s) in Column 4 of Part 1 include(s) payment for all expenses. | | <input type="checkbox"/> Expenses are separately reimbursable in accordance with Subsection 10.5 of the Agreement. The maximum amount of reimbursable expenses is: | | |
| Part 3 – Subconsultant Costs | | | | |
| <input checked="" type="checkbox"/> Subconsultant costs are not separately compensable. The amount(s) in Column 4 of Part 1 include(s) payment for subconsultants. | | <input type="checkbox"/> Subconsultant costs are separately compensable in accordance with Subsection 10.6 of the Agreement. The maximum amount of compensation for subconsultant costs is: | | |
| Part 4 – Additional Services | | | | |
| <input checked="" type="checkbox"/> No money is budgeted for Additional Services, and the Director can not authorize any Additional Services. | | <input type="checkbox"/> The Director may authorize the Consultant to perform Additional Services up to the following maximum amount: | | |
| Maximum Total Compensation (sum of Parts 1 through 4): | | | \$144,080 | \$143,777 |

Section 2 – Schedule of Rates and Charges

☐ **Omitted.** No Schedule of Rates and Charges is included because the City will not be compensating the Consultant for any Basic Services on a “time & materials” basis.

☒ The following is the Schedule of Rates and Charges applicable to this Agreement:

The cost structure detailed below is contained in the EDA grant scope and is included here to provide a basis for the cost structure.

Total Costs = (Allocated base salaries + fringe + de minimus) as approved by the EDA grant award.

Base Salaries

| Position | Name | Program Salary/Rate | Level of Effort Y1 | Cost – Y1 | Level of Effort Y2 | Cost – Y2* | Total, over 2 Years |
|---|------------------------|---------------------|--------------------|------------------|--------------------|------------------|---------------------|
| MFG: SJ Director | Michael Erickson | \$113,300 | 40% | \$45,320 | 37.5% | \$44,400 | \$89,720 |
| CEO, SFMade | Janet Lees, Acting CEO | \$220,896 | 15% | \$33,134 | 14.5% | \$33,471 | \$66,605 |
| Manager San Jose Services, (MFG: SJ/SF Made) | Phil Lonsdale | \$75,000 | 34% | \$25,500 | 33% | \$25,864 | \$51,364 |
| Totals | | | | \$103,954 | | \$103,735 | |

Fringe Benefits

| Rate | Wages – Year 1 | Cost Year 1 | Wages – Year 2 | Cost Year 2 |
|--|----------------|-----------------|----------------|-----------------|
| 26% of all allocated salary costs | \$103,954 | \$27,028 | \$103,735 | \$26,971 |

Authorized de minimus - 10% of modified direct costs (personnel and fringe)

| Entity | MTDC Y1 | Cost Y1 (10%) | MTDC Y2 | Cost Y2 (10%) |
|---------------|-----------|---------------|-----------|---------------|
| MFG SJ | \$130,982 | \$13,098 | \$130,706 | \$13,071 |

Total for Year 1: \$144,080 (\$103,954 + \$27,028 + \$13,098)

Total for Year 2: \$143,777 (\$103,735 + \$26,971 + \$13,071)

All tasks shall be invoiced quarterly for 1/4th of the amount of each task. Activity reports shall also be submitted along with the invoices.

| Payment No. | Date | Amount |
|-------------|--------|----------|
| 1 | 30-Jun | \$36,020 |
| 2 | 30-Sep | \$36,020 |
| 3 | 31-Dec | \$36,020 |
| 4 | 31-Mar | \$36,020 |
| Year 2 | | |
| 5 | 30-Jun | \$35,944 |
| 6 | 30-Sep | \$35,944 |
| 7 | 31-Dec | \$35,944 |
| 8 | 31-Mar | \$35,944 |

EXHIBIT C - INSURANCE REQUIREMENTS

GRANTEE, at GRANTEE's sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by GRANTEE, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance.

There shall be no endorsement reducing the scope of coverage required above unless approved by the CITY's Risk Manager.

B. Minimum Limits of Insurance

GRANTEE shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by CITY's Risk Manager.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages

a. The City of San José, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, GRANTEE; products and completed operations of GRANTEE; premises owned, leased or used by GRANTEE; and automobiles owned, leased, hired or borrowed by GRANTEE. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.

b. GRANTEE's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of GRANTEE's insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies by GRANTEE shall not affect coverage provided CITY, its officers, employees, agents, or contractors.

d. Coverage shall state that GRANTEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

e. Coverage shall contain waiver of subrogation in favor of the City of San José, its officers, employees, agents and contractors

2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of the City of San José, its officers, employees, agents and contractors

3. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY, except that ten (10) days prior written notice shall apply in the event of cancellation for non-payment of premium.

E. **Acceptability of Insurers**

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

F. **Verification of Coverage**

GRANTEE shall furnish CITY with certificates of insurance and with endorsements affecting coverage required by this AGREEMENT. The certificates and copies of endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be emailed in pdf format to: Riskmgmt@sanjoseca.gov:

City of San José – Finance Department
Risk & Insurance Program
200 East Santa Clara Street, 14th Floor Tower
San José, CA 95113-1905

G. **Subcontractors**

GRANTEE shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/6/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

| | |
|---|---|
| PRODUCER CalNonprofits Insurance Services 1500 41st Avenue Suite 280 Capitola CA 95010 | CONTACT NAME Jerusha Sandhu PHONE (A/C, No, Ext) (831) 824-5005 E-MAIL ADDRESS jerusha@cal-insurance.org FAX (A/C, No) |
| INSURED SFMade, Inc. 150 Hooper Street #200 San Francisco CA 94107 | INSURER(S) AFFORDING COVERAGE INSURER A Philadelphia Indemnity Insurance Company INSURER B Hartford Fire Insurance Company INSURER C INSURER D INSURER E INSURER F |
| | NAIC # 18058 |

COVERAGES

CERTIFICATE NUMBER: 465988754

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|---|--|----------|---------------|-------------------------|-------------------------|--|
| A | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE L MIT APPL ES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: | Y | | PHPK2144901 | 8/3/2020 | 8/3/2021 | EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$ |
| A | <input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY | | | PHPK2144901 | 8/3/2020 | 8/3/2021 | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ |
| A | <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000 | | | PHUB726339 | 8/3/2020 | 8/3/2021 | EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$ |
| B | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCR PTION OF OPERATIONS below | Y/N <input checked="" type="checkbox"/> N | Y | 57WECAB70G6 | 9/26/2020 | 9/26/2021 | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACC DENT \$ \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$ \$1,000,000 E.L. DISEASE - POLICY LIMIT \$ \$1,000,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

City of San Jose and the Foundation for California Community Colleges, its directors, officers and employees are named as Additional Insured with respect to General Liability when required by written contract per Automatic Additional Insured form CG 2026 0413 attached. Primary and Non-conr butory clause applies to General Liability per form PI-GL-005 attached. Waiver of Subrogation applies to General Liability per form CG 24040509. 30 days written notice of cancellation except 10 days for nonpayment of premium.

CERTIFICATE HOLDER**CANCELLATION**

City of San Jose
200 E Santa Clara St
San Jose CA 95113

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2015 ACORD CORPORATION. All rights reserved.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**CANCELLATION NOTICE TO SCHEDULED ADDITIONAL INSURED OR
CERTIFICATE HOLDER**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
 PROFESSIONAL LIABILITY COVERAGE PART
 COMMERCIAL CRIME COVERAGE PART
 COMMERCIAL INLAND MARINE COVERAGE PART
 COMMERCIAL PROPERTY COVERAGE PART
 COMMERCIAL AUTOMOBILE COVERAGE PART

SCHEDULE OF ADDITIONAL INSURED OR CERTIFICATE HOLDERS

| AI or CH | Additional Insured or Certificate Holder | Address |
|----------|--|---|
| CH | City of San Jose, its officers, employees, agents and contractors | 200 E Santa Clara St, San Jose, CA 95113 |

The following is added to **A. CANCELLATION** of the Common Policy Conditions of the above applicable coverage part:

- A.** In the event we cancel the policy in accordance with the policy's terms and conditions, we will endeavor to mail written notice of cancellation to Additional Insureds or Certificate Holders, shown in the above SCHEDULE within the time frame listed below. However, failure to mail such notice shall impose no obligation of any kind upon us, our agents or representatives.
1. 30 days before the effective date of cancellation if we cancel for any reason other than for non - payment of premium.

As respects Additional Insureds, the above cancellation provision applies only when the Additional Insured shown in the above **SCHEDULE** is added to the policy by a separate additional insured endorsement as the **CANCELLATION NOTICE TO ADDITIONAL INSURED OR CERTIFICATE HOLDER** does not provide additional insured coverage.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED
PRIMARY AND NON-CONTRIBUTORY INSURANCE**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Effective Date: 09/18/2019

Name of Person or Organization (Additional Insured):

City of San Jose, its officers, employees, agents and contractors, 200 E Santa Clara St, San Jose, CA 95113

SECTION II – WHO IS AN INSURED is amended to include as an additional insured the person(s) or organization(s) shown in the endorsement Schedule, but only with respect to liability for “bodily injury,” “property damage” or “personal and advertising injury” arising out of or relating to your negligence in the performance of “your work” for such person(s) or organization(s) that occurs on or after the effective date shown in the endorsement Schedule.

This insurance is primary to and non-contributory with any other insurance maintained by the person or organization (Additional Insured), except for loss resulting from the sole negligence of that person or organization.

This condition applies even if other valid and collectible insurance is available to the Additional Insured for a loss or “occurrence” we cover for this Additional Insured.

The Additional Insured’s limits of insurance do not increase our limits of insurance, as described in **SECTION III – LIMITS OF INSURANCE.**

All other terms, conditions, and exclusions under the policy are applicable to this endorsement and remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**CANCELLATION NOTICE TO SCHEDULED ADDITIONAL INSURED OR
CERTIFICATE HOLDER**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
 PROFESSIONAL LIABILITY COVERAGE PART
 COMMERCIAL CRIME COVERAGE PART
 COMMERCIAL INLAND MARINE COVERAGE PART
 COMMERCIAL PROPERTY COVERAGE PART
 COMMERCIAL AUTOMOBILE COVERAGE PART

SCHEDULE OF ADDITIONAL INSURED OR CERTIFICATE HOLDERS

| AI or CH | Additional Insured or Certificate Holder | Address |
|----------|--|-----------------------|
| CH | City of San Jose, its officers, | 200 E Santa Clara St, |
| | employees, agents and contractors | San Jose, CA 95113 |

The following is added to **A. CANCELLATION** of the Common Policy Conditions of the above applicable coverage part:

- A.** In the event we cancel the policy in accordance with the policy's terms and conditions, we will endeavor to mail written notice of cancellation to Additional Insureds or Certificate Holders, shown in the above SCHEDULE within the time frame listed below. However, failure to mail such notice shall impose no obligation of any kind upon us, our agents or representatives.
1. 30 days before the effective date of cancellation if we cancel for any reason other than for non - payment of premium.

As respects Additional Insureds, the above cancellation provision applies only when the Additional Insured shown in the above **SCHEDULE** is added to the policy by a separate additional insured endorsement as the **CANCELLATION NOTICE TO ADDITIONAL INSURED OR CERTIFICATE HOLDER** does not provide additional insured coverage.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED
PRIMARY AND NON-CONTRIBUTORY INSURANCE**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Effective Date: 09/18/2019

Name of Person or Organization (Additional Insured):

City of San Jose, its officers, employees, agents and contractors, 200 E Santa Clara St, San Jose, CA 95113

SECTION II – WHO IS AN INSURED is amended to include as an additional insured the person(s) or organization(s) shown in the endorsement Schedule, but only with respect to liability for “bodily injury,” “property damage” or “personal and advertising injury” arising out of or relating to your negligence in the performance of “your work” for such person(s) or organization(s) that occurs on or after the effective date shown in the endorsement Schedule.

This insurance is primary to and non-contributory with any other insurance maintained by the person or organization (Additional Insured), except for loss resulting from the sole negligence of that person or organization.

This condition applies even if other valid and collectible insurance is available to the Additional Insured for a loss or “occurrence” we cover for this Additional Insured.

The Additional Insured’s limits of insurance do not increase our limits of insurance, as described in **SECTION III – LIMITS OF INSURANCE.**

All other terms, conditions, and exclusions under the policy are applicable to this endorsement and remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**GENERAL LIABILITY DELUXE ENDORSEMENT:
HUMAN SERVICES**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE

It is understood and agreed that the following extensions only apply in the event that no other specific coverage for the indicated loss exposure is provided under this policy. If such specific coverage applies, the terms, conditions and limits of that coverage are the sole and exclusive coverage applicable under this policy, unless otherwise noted on this endorsement. The following is a summary of the Limits of Insurance and additional coverages provided by this endorsement. For complete details on specific coverages, consult the policy contract wording.

| Coverage Applicable | Limit of Insurance | Page # |
|---|---------------------------|---------------|
| Extended Property Damage | Included | 2 |
| Limited Rental Lease Agreement Contractual Liability | \$50,000 limit | 2 |
| Non-Owned Watercraft | Less than 58 feet | 2 |
| Damage to Property You Own, Rent, or Occupy | \$30,000 limit | 2 |
| Damage to Premises Rented to You | \$1,000,000 | 3 |
| HIPAA | Clarification | 4 |
| Medical Payments | \$20,000 | 5 |
| Medical Payments – Extended Reporting Period | 3 years | 5 |
| Athletic Activities | Amended | 5 |
| Supplementary Payments – Bail Bonds | \$5,000 | 5 |
| Supplementary Payment – Loss of Earnings | \$1,000 per day | 5 |
| Employee Indemnification Defense Coverage | \$25,000 | 5 |
| Key and Lock Replacement – Janitorial Services Client Coverage | \$10,000 limit | 6 |
| Additional Insured – Newly Acquired Time Period | Amended | 6 |
| Additional Insured – Medical Directors and Administrators | Included | 7 |
| Additional Insured – Managers and Supervisors (with Fellow Employee Coverage) | Included | 7 |
| Additional Insured – Broadened Named Insured | Included | 7 |
| Additional Insured – Funding Source | Included | 7 |
| Additional Insured – Home Care Providers | Included | 7 |
| Additional Insured – Managers, Landlords, or Lessors of Premises | Included | 7 |
| Additional Insured – Lessor of Leased Equipment | Included | 7 |
| Additional Insured – Grantor of Permits | Included | 8 |
| Additional Insured – Vendor | Included | 8 |
| Additional Insured – Franchisor | Included | 9 |
| Additional Insured – When Required by Contract | Included | 9 |
| Additional Insured – Owners, Lessees, or Contractors | Included | 9 |
| Additional Insured – State or Political Subdivisions | Included | 10 |

| | | |
|---|---------------|----|
| Duties in the Event of Occurrence, Claim or Suit | Included | 10 |
| Unintentional Failure to Disclose Hazards | Included | 10 |
| Transfer of Rights of Recovery Against Others To Us | Clarification | 10 |
| Liberalization | Included | 11 |
| Bodily Injury – includes Mental Anguish | Included | 11 |
| Personal and Advertising Injury – includes Abuse of Process, Discrimination | Included | 11 |

A. Extended Property Damage

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE

LIABILITY, Subsection **2. Exclusions**, Paragraph **a.** is deleted in its entirety and replaced by the following:

a. Expected or Intended Injury

“Bodily injury” or property damage” expected or intended from the standpoint of the insured. This exclusion does not apply to “bodily injury” or “property damage” resulting from the use of reasonable force to protect persons or property.

B. Limited Rental Lease Agreement Contractual Liability

SECTION I – COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE

LIABILITY, Subsection **2. Exclusions**, Paragraph **b. Contractual Liability** is amended to include the following:

- (3) Based on the named insured’s request at the time of claim, we agree to indemnify the named insured for their liability assumed in a contract or agreement regarding the rental or lease of a premises on behalf of their client, up to \$50,000. This coverage extension only applies to rental lease agreements. This coverage is excess over any renter’s liability insurance of the client.

C. Non-Owned Watercraft

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE

LIABILITY, Subsection **2. Exclusions**, Paragraph **g. (2)** is deleted in its entirety and replaced by the following:

- (2) A watercraft you do not own that is:
 - (a) Less than 58 feet long; and
 - (b) Not being used to carry persons or property for a charge;

This provision applies to any person, who with your consent, either uses or is responsible for the use of a watercraft. This insurance is excess over any other valid and collectible insurance available to the insured whether primary, excess or contingent.

D. Damage to Property You Own, Rent or Occupy

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE

LIABILITY, Subsection **2. Exclusions**, Paragraph **j. Damage to Property**, Item **(1)** is deleted in its entirety and replaced with the following:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property, unless the damage to property is caused by your client, up to a \$30,000 limit. A client is defined as a person under your direct care and supervision.

E. Damage to Premises Rented to You

1. If damage by fire to premises rented to you is not otherwise excluded from this Coverage Part, the word "fire" is changed to "fire, lightning, explosion, smoke, or leakage from automatic fire protective systems" where it appears in:

- a. The last paragraph of **SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, Subsection **2. Exclusions**; is deleted in its entirety and replaced by the following:

Exclusions **c.** through **n.** do not apply to damage by fire, lightning, explosion, smoke, or leakage from automatic fire protective systems to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in **SECTION III – LIMITS OF INSURANCE**.

- b. **SECTION III – LIMITS OF INSURANCE**, Paragraph 6. is deleted in its entirety and replaced by the following:

Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning, explosion, smoke, or leakage from automatic fire protective systems while rented to you or temporarily occupied by you with permission of the owner.

- c. **SECTION V – DEFINITIONS**, Paragraph 9.a., is deleted in its entirety and replaced by the following:

A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning, explosion, smoke, or leakage from automatic fire protective systems to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";

2. **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, Subsection **4. Other Insurance**, Paragraph **b. Excess Insurance**, **(1) (a) (ii)** is deleted in its entirety and replaced by the following:

That is insurance for fire, lightning, explosion, smoke, or leakage from automatic fire protective systems for premises rented to you or temporarily occupied by you with permission of the owner;

3. The Damage To Premises Rented To You Limit section of the Declarations is amended to the greater of:

- a. \$1,000,000; or
- b. The amount shown in the Declarations as the Damage to Premises Rented to You Limit.

This is the most we will pay for all damage proximately caused by the same event, whether such damage results from fire, lightning, explosion, smoke, or leaks from automatic fire protective systems or any combination thereof.

F. HIPAA

SECTION I – COVERAGES, COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY, is amended as follows:

1. Paragraph **1. Insuring Agreement** is amended to include the following:

We will pay those sums that the insured becomes legally obligated to pay as damages because of a "violation(s)" of the Health Insurance Portability and Accountability Act (HIPAA). We have the right and the duty to defend the insured against any "suit," "investigation," or "civil proceeding" seeking these damages. However, we will have no duty to defend the insured against any "suit" seeking damages, "investigation," or "civil proceeding" to which this insurance does not apply.

2. Paragraph **2. Exclusions** is amended to include the following additional exclusions:

This insurance does not apply to:

- a. **Intentional, Willful, or Deliberate Violations**

Any willful, intentional, or deliberate "violation(s)" by any insured.

- b. **Criminal Acts**

Any "violation" which results in any criminal penalties under the HIPAA.

- c. **Other Remedies**

Any remedy other than monetary damages for penalties assessed.

- d. **Compliance Reviews or Audits**

Any compliance reviews by the Department of Health and Human Services.

3. **SECTION V – DEFINITIONS** is amended to include the following additional definitions:

- a. "Civil proceeding" means an action by the Department of Health and Human Services (HHS) arising out of "violations."
- b. "Investigation" means an examination of an actual or alleged "violation(s)" by HHS. However, "investigation" does not include a Compliance Review.
- c. "Violation" means the actual or alleged failure to comply with the regulations included in the HIPAA.

G. Medical Payments – Limit Increased to \$20,000, Extended Reporting Period

If **COVERAGE C MEDICAL PAYMENTS** is not otherwise excluded from this Coverage Part:

1. The Medical Expense Limit is changed subject to all of the terms of **SECTION III - LIMITS OF INSURANCE** to the greater of:

- a. \$20,000; or
- b. The Medical Expense Limit shown in the Declarations of this Coverage Part.

2. **SECTION I – COVERAGES, COVERAGE C MEDICAL PAYMENTS**, Subsection **1. Insuring Agreement**, a. (3) (b) is deleted in its entirety and replaced by the following:

- (b) The expenses are incurred and reported to us within three years of the date of the accident.

H. Athletic Activities

SECTION I – COVERAGES, COVERAGE C MEDICAL PAYMENTS, Subsection **2. Exclusions**, Paragraph **e. Athletic Activities** is deleted in its entirety and replaced with the following:

e. Athletic Activities

To a person injured while taking part in athletics.

I. Supplementary Payments

SECTION I – COVERAGES, SUPPLEMENTARY PAYMENTS - COVERAGE A AND B are amended as follows:

1. **b.** is deleted in its entirety and replaced by the following:

1. **b.** Up to \$5000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these.

- 1.**d.** is deleted in its entirety and replaced by the following:

1. **d.** All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$1,000 a day because of time off from work.

J. Employee Indemnification Defense Coverage

SECTION I – COVERAGES, SUPPLEMENTARY PAYMENTS – COVERAGES A AND B the following is added:

We will pay, on your behalf, defense costs incurred by an “employee” in a criminal proceeding occurring in the course of employment.

The most we will pay for any “employee” who is alleged to be directly involved in a criminal proceeding is \$25,000 regardless of the numbers of “employees,” claims or “suits” brought or persons or organizations making claims or bringing “suits.”

K. Key and Lock Replacement – Janitorial Services Client Coverage

SECTION I – COVERAGES, SUPPLEMENTARY PAYMENTS – COVERAGES A AND B is amended to include the following:

We will pay for the cost to replace keys and locks at the “clients” premises due to theft or other loss to keys entrusted to you by your “client,” up to a \$10,000 limit per occurrence and \$10,000 policy aggregate.

We will not pay for loss or damage resulting from theft or any other dishonest or criminal act that you or any of your partners, members, officers, “employees”, “managers”, directors, trustees, authorized representatives or any one to whom you entrust the keys of a “client” for any purpose commit, whether acting alone or in collusion with other persons.

The following, when used on this coverage, are defined as follows:

- a. "Client" means an individual, company or organization with whom you have a written contract or work order for your services for a described premises and have billed for your services.
- b. "Employee" means:
 - (1) Any natural person:
 - (a) While in your service or for 30 days after termination of service;
 - (b) Who you compensate directly by salary, wages or commissions; and
 - (c) Who you have the right to direct and control while performing services for you; or
 - (2) Any natural person who is furnished temporarily to you:
 - (a) To substitute for a permanent "employee" as defined in Paragraph (1) above, who is on leave; or
 - (b) To meet seasonal or short-term workload conditions;
 while that person is subject to your direction and control and performing services for you.
 - (3) "Employee" does not mean:
 - (a) Any agent, broker, person leased to you by a labor leasing firm, factor, commission merchant, consignee, independent contractor or representative of the same general character; or
 - (b) Any "manager," director or trustee except while performing acts coming within the scope of the usual duties of an "employee."
- c. "Manager" means a person serving in a directorial capacity for a limited liability company.

L. Additional Insureds

SECTION II – WHO IS AN INSURED is amended as follows:

- 1. If coverage for newly acquired or formed organizations is not otherwise excluded from this

Coverage Part, Paragraph **3.a.** is deleted in its entirety and replaced by the following:

a. Coverage under this provision is afforded until the end of the policy period.

2. Each of the following is also an insured:

a. Medical Directors and Administrators – Your medical directors and administrators, but only while acting within the scope of and during the course of their duties as such. Such duties do not include the furnishing or failure to furnish professional services of any physician or psychiatrist in the treatment of a patient.

b. Managers and Supervisors – Your managers and supervisors are also insureds, but only with respect to their duties as your managers and supervisors. Managers and supervisors who are your “employees” are also insureds for “bodily injury” to a co-“employee” while in the course of his or her employment by you or performing duties related to the conduct of your business.

This provision does not change Item 2.a.(1)(a) as it applies to managers of a limited liability company.

c. Broadened Named Insured – Any organization and subsidiary thereof which you control and actively manage on the effective date of this Coverage Part. However, coverage does not apply to any organization or subsidiary not named in the Declarations as Named Insured, if they are also insured under another similar policy, but for its termination or the exhaustion of its limits of insurance.

d. Funding Source – Any person or organization with respect to their liability arising out of:

(1) Their financial control of you; or

(2) Premises they own, maintain or control while you lease or occupy these premises.

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

e. Home Care Providers – At the first Named Insured's option, any person or organization under your direct supervision and control while providing for you private home respite or foster home care for the developmentally disabled.

f. Managers, Landlords, or Lessors of Premises – Any person or organization with respect to their liability arising out of the ownership, maintenance or use of that part of the premises leased or rented to you subject to the following additional exclusions:

This insurance does not apply to:

(1) Any “occurrence” which takes place after you cease to be a tenant in that premises; or

(2) Structural alterations, new construction or demolition operations performed by or on behalf of that person or organization.

g. Lessor of Leased Equipment – Automatic Status When Required in Lease Agreement With You – Any person or organization from whom you lease equipment when you and such person or organization have agreed in writing in a contract or agreement that such person or organization is to be added as an additional insured on your policy. Such person or

organization is an insured only with respect to liability for "bodily injury," "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

A person's or organization's status as an additional insured under this endorsement ends when their contract or agreement with you for such leased equipment ends.

With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

h. Grantors of Permits – Any state or political subdivision granting you a permit in connection with your premises subject to the following additional provision:

(1) This insurance applies only with respect to the following hazards for which the state or political subdivision has issued a permit in connection with the premises you own, rent or control and to which this insurance applies:

- (a)** The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners or decorations and similar exposures;
- (b)** The construction, erection, or removal of elevators; or
- (c)** The ownership, maintenance, or use of any elevators covered by this insurance.

i. Vendors – Only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

(1) The insurance afforded the vendor does not apply to:

- (a)** "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b)** Any express warranty unauthorized by you;
- (c)** Any physical or chemical change in the product made intentionally by the vendor;
- (d)** Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- (e)** Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- (f)** Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- (g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- (h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - (i) The exceptions contained in Sub-paragraphs (d) or (f); or
 - (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
- (2) This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing.
- j. **Franchisor** – Any person or organization with respect to their liability as the grantor of a franchise to you.
- k. **As Required by Contract** – Any person or organization where required by a written contract executed prior to the occurrence of a loss. Such person or organization is an additional insured for "bodily injury," "property damage" or "personal and advertising injury" but only for liability arising out of the negligence of the named insured. The limits of insurance applicable to these additional insureds are the lesser of the policy limits or those limits specified in a contract or agreement. These limits are included within and not in addition to the limits of insurance shown in the Declarations
- l. **Owners, Lessees or Contractors** – Any person or organization, but only with respect to liability for "bodily injury," "property damage" or "personal and advertising injury" caused, in whole or in part, by:
 - (1) Your acts or omissions; or
 - (2) The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured when required by a contract.

With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

- (a) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- (b) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

m. State or Political Subdivisions – Any state or political subdivision as required, subject to the following provisions:

- (1) This insurance applies only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit, and is required by contract.
- (2) This insurance does not apply to:
 - (a) "Bodily injury," "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
 - (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard."

M. Duties in the Event of Occurrence, Claim or Suit

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, Paragraph 2. is amended as follows:

a. is amended to include:

This condition applies only when the "occurrence" or offense is known to:

- (1) You, if you are an individual;
- (2) A partner, if you are a partnership; or
- (3) An executive officer or insurance manager, if you are a corporation.

b. is amended to include:

This condition will not be considered breached unless the breach occurs after such claim or "suit" is known to:

- (1) You, if you are an individual;
- (2) A partner, if you are a partnership; or
- (3) An executive officer or insurance manager, if you are a corporation.

N. Unintentional Failure To Disclose Hazards

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, 6. Representations is amended to include the following:

It is agreed that, based on our reliance on your representations as to existing hazards, if you should unintentionally fail to disclose all such hazards prior to the beginning of the policy period of this Coverage Part, we shall not deny coverage under this Coverage Part because of such failure.

O. Transfer of Rights of Recovery Against Others To Us

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, 8. Transfer of Rights of

Recovery Against Others To Us is deleted in its entirety and replaced by the following:

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

Therefore, the insured can waive the insurer's rights of recovery prior to the occurrence of a loss, provided the waiver is made in a written contract.

P. Liberalization

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, is amended to include the following:

If we revise this endorsement to provide more coverage without additional premium charge, we will automatically provide the additional coverage to all endorsement holders as of the day the revision is effective in your state.

Q. Bodily Injury – Mental Anguish

SECTION V – DEFINITIONS, Paragraph 3. Is deleted in its entirety and replaced by the following:

"Bodily injury" means:

- a. Bodily injury, sickness or disease sustained by a person, and includes mental anguish resulting from any of these; and
- b. Except for mental anguish, includes death resulting from the foregoing (Item a. above) at any time.

R. Personal and Advertising Injury – Abuse of Process, Discrimination

If **COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY COVERAGE** is not otherwise excluded from this Coverage Part, the definition of "personal and advertising injury" is amended as follows:

- 1. **SECTION V – DEFINITIONS**, Paragraph 14.b. is deleted in its entirety and replaced by the following:

- b. Malicious prosecution or abuse of process;

- 2. **SECTION V – DEFINITIONS**, Paragraph 14. is amended by adding the following:

Discrimination based on race, color, religion, sex, age or national origin, except when:

- a. Done intentionally by or at the direction of, or with the knowledge or consent of:
 - (1) Any insured; or
 - (2) Any executive officer, director, stockholder, partner or member of the insured;
- b. Directly or indirectly related to the employment, former or prospective employment, termination of employment, or application for employment of any person or persons by an insured;

- c. Directly or indirectly related to the sale, rental, lease or sublease or prospective sales, rental, lease or sub-lease of any room, dwelling or premises by or at the direction of any insured; or
- d. Insurance for such discrimination is prohibited by or held in violation of law, public policy, legislation, court decision or administrative ruling.

The above does not apply to fines or penalties imposed because of discrimination.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Person Or Organization:

City of San Jose, its officers, employees, agents and contractors

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us** of **Section IV – Conditions:**

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

BUSINESS TAX LOOKUP

Search:

Business Name

SFMADE

Business Owner

SFMADE, INC

NAICS

999999-UNCLASSIFIED BUSINESS

Account Id

0896279630

Status

ACTIVE

Business Address

1608 LAS PLUMAS ST SAN JOSE, CA 95133

Mailing Address

1608 LAS PLUMAS AVE SAN JOSE, CA 95133

Nature Of Business

Non- Profit

Start Date

06/03/2019

Expiration Date

06/15/2021

Employees

3

☒ FOR YOUR ELECTRONIC SIGNATURE
☒ FULLY EXECUTED COPY TO FOLLOW

CITY STAFF: Nathan Donato-Weinstein

STAFF EMAIL: Nathan.donato-
weinstein@sanjoseca.gov

SCANNED SIGNATURE AUTHORIZATION

DATE: 5/24/2021

TOTAL PAGES:
(INCLUDING THIS PAGE) 43

CONSULTANT NAME: SFMade
EMAIL: janet@sfmade.org
PHONE: 415-408-5605, x2

X I agree to use electronic signatures

SIGNATURE OF CONSULTANT: Janet Lees

DIRECTIONS:

REVIEW THE ENCLOSED DOCUMENT, IF IT IS ACCEPTABLE:

1. SIGN THE DOCUMENT
2. CHECK THE BOX BELOW YOUR NAME AND SIGN AGREEING TO THE USE OF ELECTRONIC SIGNATURES
3. SCAN YOUR EXECUTED DOCUMENT TOGETHER WITH THIS COVER PAGE **IN BLUE INK**
4. EMAIL THE ENTIRE DOCUMENT TO (CITY STAFF EMAIL ADDRESS):

TO BE COMPLETED BY CITY STAFF:

ALTERNATIVE METHODS OF VERIFICATION:

- ☐ USE OF A PASSWORD PROTECTED WEBSITE
☐ CONFIRMED BY A KNOWN TELEPHONE NUMBER
☒ PERSONALLY KNOWN TO CITY STAFF

Memorandum

TO: Sarah Zarate
Director
City Manager's Office

FROM: Nanci Klein

SUBJECT: Approval of Retroactivity

DATE: June 1, 2021

Approved

Sarah Zarate

Date

6/29/21

SUBJECT: APPROVAL OF RETROACTIVITY IN THE AGREEMENT FOR SFMADE INC.

In June 2013, the City Auditor released an audit report entitled "Consulting Agreements: Better Enforcement of Procurement Rules, Monitoring, and Transparency is Needed." (City Audit Report No. 13-06.) Recommendation No. 4 (Audit Report pages 16-17) involves limiting retroactive agreements to situations where contract execution is in process. The audit report states that when a City employee informally authorizes work before execution of the agreement, the employee commits City funds not within his/her authority to commit.

The Office of Economic Development is seeking authorization for the retroactive provision to pay for services in the following agreement.

The justification for the requests detailed below that are to include a retroactivity provision is that the agreement either:

- ☒ Its execution was already in process when the services started.
- ☐ The services responded to an *immediate* threat to public health, safety, or property.
- ☐ The manner of compensation doesn't involve a commitment of City funds.
- ☐ The consultant/contractor provided a letter stating that the City isn't obligated to pay for any services it provided if the contract/amendment isn't executed.
- ☒ Starting services protected or advanced the following significant City interest:

In July 2020, the Office of Economic Development applied for a grant through the Economic Development Administration (EDA) to assist the City's most vulnerable businesses in recovering from the COVID-19 pandemic. The City was joined in this application by nonprofit two co-applicants: SFMade Inc./Manufacture: San Jose and the San Jose Downtown Association.

On Feb. 25 2021, the Economic Development Administration notified the Office of Economic Development that it has been awarded federal assistance in the amount of \$1,171,579 for the San Jose Small Business and Manufacturing Recovery Initiative to provide technical assistance to businesses and manufacturers in underserved areas of the city.

Subsequent to the grant award, SFMade hired a grant-supported staff member as of April 1 and initiated program development and outreach to manufacturers in the grant's priority geographical area, in keeping with the original timeline of the grant. Time is of the essence of the SFMade program, as activities focus on COVID-19 recovery information and resources, as well as hiring/re-hiring efforts.

However, staff encountered several administrative issues that created a gap in the timeline to plan and negotiate a contract with SFMade. Under terms of the grant, payments for the co-applicants are made by the City of San Jose, and then reimbursed by the EDA. However, staff required more time than anticipated to establish the cross-departmental processes and procedures necessary to establish the reimbursements and coordinate with the EDA. That process and the funding mechanism for reimbursement-basis payments has been identified, and the contract is now ready to move forward.

The Department understands that retroactive agreements are to be avoided. The Department requests an exception be made and the agreement detailed in this memorandum be allowed to proceed with retroactive clauses. The Department acknowledges the process was out of City contract compliance and will monitor future agreements to prevent this oversight in the future.

Nanci Klein
Director of Economic Development

For questions please contact Karina Alvarez, Office of Economic Development Senior Executive Analyst, at karina.alvarez@sanjoseca.gov .



City of San José Contract/Agreement Transmittal Form

Route Order

Attached / Completed

Electronically Signed

TO: ☐ City Attorney
☐ City Manager
☐ City Clerk **OR** Return to
Dept. (circle one)

☐ Insurance Certificates / Waivers ☐ Electronically Signed:
☐ Business Tax Certificate ☐ Audit Trail Attached (if applicable)
☐ Contacted Clerk re: Form 700 ☐ Scanned Signature Authorization
☐ Supplemental Memorandums (if applicable):

Type of Document:

Type of Contract:

REQUIRED INFORMATION FOR ALL CONTRACTS:

Existing GILES # 001
XXX

Contractor: _____

Address: _____

Phone: _____ Email: _____

Contract Description:

Term Start Date: _____ Term End Date: _____ Extension: _____

Method of Procurement: _____ RFB, RFP or RFQ No.: _____ Date Conducted: _____

Agenda Date (if applicable): _____ Agenda Item No.: 0

Resolution No.: _____ Ordinance No.: _____

Original Contract Amount: _____ Amount of Increase/Decrease: _____

Option #: ____ of ____ Option Amount: _____ Updated Contract Amount: _____

Fund/Appropriation: _____

Form 700 Required: _____ Revenue Agreement: _____

Business Tax Certificate No.: _____ Expiration Date: _____

Department: _____

Department Contact Name/Phone: _____

Notes:

Department Director Signature: Nanci Klein /s/ 7/7/21 _____
Date

Office of the City Manager Signature: Jessica Lowry 7/2/21 _____
Date