

**CITY OF SAN JOSE  
AGREEMENT**

**SUMMARY PAGE**

This AGREEMENT is entered into this 23rd day of July, 2021, by the **CITY OF SAN JOSE**, a municipal corporation ("CITY"), and **FOUNDATION FOR CALIFORNIA COMMUNITY COLLEGES**, a California non-profit 501(c)(3) public benefit nonprofit corporation ("CONTRACTOR")

Description:

CONTRACTOR will provide career opportunities for individuals and recruitment solutions for employers through its Career Catalyst program by pairing qualified individuals with organizations for work and job training. The Career Catalyst program ("PROGRAM") will provide services for the City of San Jose's young adults and others residing in high-poverty, high-unemployment neighborhoods participating in the Resilience Corps small business pathway ("PARTICIPANTS")

Funding Source:

American Rescue Plan Act (ARPA)

Amount Not to Exceed:

\$452,794

Payment Terms:

See Exhibit D

Agreement Term:                      Start Date: Upon Execution                      End Date: 6/30/22

PARTIES TO AGREEMENT:	CONTRACTOR	CITY
Name:	FOUNDATION FOR CALIFORNIA COMMUNITY COLLEGES	CITY OF SAN JOSE
Address for Legal Notice:	1102 Q Street, Suite 4800 Sacramento, CA 95811	work2future Business and Administration Services Office of Economic Development, San José Silicon Valley Workforce Development Board 5730 Chambertin Drive San José, CA 95118
Attention:	Tim Aldinger	Monique Melchor Director
Email Address:	<a href="mailto:taldinger@foundationccc.org">taldinger@foundationccc.org</a>	<a href="mailto:monique.melchor@sanjoseca.gov">monique.melchor@sanjoseca.gov</a> monique.melchor@sanjoseca.gov
Telephone No.:	916-491-4499	(408) -794-1108
Federal Taxpayer ID:	68-0412350	
City Business License/ Tax No.:		
Type of Entity:	Nonprofit	
State of Incorporation or Residency:	California	

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**CONTACT INFORMATION**

<b>CONTRACTOR CONTACT PERSON:</b>	JD Burchfield
<b>Title:</b>	Manager, Career Catalyst Business Operations
<b>Telephone Number:</b>	916.325.4300 Ext:330
<b>Email:</b>	<a href="mailto:JBurchfield@foundationccc.org">JBurchfield@foundationccc.org</a>

<b>CITY CONTACT PERSON:</b>	Colleen Brennan
<b>Title:</b>	Contracts Manager
<b>Telephone Number:</b>	408-794-1139
<b>Email:</b>	<a href="mailto:Colleen.brennan@sanjoseca.gov">Colleen.brennan@sanjoseca.gov</a>

**EXHIBIT LIST & SIGNATURE PAGE**

YES	N/A		
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Exhibit A:	Scope of Services
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Exhibit B:	Monitoring, Evaluation, and Reporting Requirements
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Exhibit C:	Budget Summary
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Exhibit D:	Payments to CONTRACTOR and Reporting Schedule
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Exhibit E:	General GRANT Provisions
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Exhibit F:	Employee/Volunteer Clearance Verification and Compliance with the Child Abuse and Neglect Reporting Act *
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Exhibit G:	Insurance

\* applicable if CONTRACTOR employees or volunteers perform services in a position i) having supervisory or disciplinary authority over minors; or ii) requiring contact with children, or as a food concessionaire or other similar licensed concessionaire.

The Exhibits and Certifications marked above are attached hereto and incorporated herein. I certify that I have read and hereby agree to comply with all the terms and provisions contained in this AGREEMENT, including without limitation, all Exhibits and Certifications.

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

**Julian Roberts**

*Julian Roberts*  
jroberts@foundationccc.org (7/19/2021)  
**Email** jroberts@foundationccc.org

**Joseph Quintana**

*Joseph Quintana*  
jquintana@foundationccc.org (7/19/2021)  
**Email** jquintana@foundationccc.org

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**Approved as to Form:**

Attorney  
Arlene Silva  
Deputy City Attorney IV U  
arlene.silva@sanjoseca.gov

*Arlene Silva*  
Arlene Silva (7/22/2021)

**Email** arlene.silva@sanjoseca.gov

**Sarah Zarate**

*Sarah Zarate*  
Sarah Zarate (7/23/2021)

**Email** sarah.zarate@sanjoseca.gov

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This AGREEMENT is made by and between the CITY OF SAN JOSE, a municipal corporation (hereinafter "CITY"), and the person or entity identified as CONTRACTOR on the SUMMARY PAGE at the beginning of this AGREEMENT (hereinafter "CONTRACTOR").

**THE PARTIES HEREBY AGREE AS FOLLOWS:**

**SECTION 1: RECITALS**

- A. On March 11, 2021, President Biden signed the American Rescue Plan Act, that includes direct funding to Cities and States. The City of San José received \$212.3 million under the bill's Coronavirus State and Local Fiscal Recovery Fund.
- B. On March 16, 2021, Mayor Sam Liccardo, in his Fiscal Year 2021-2022 March Budget Message, proposed the creation of a Resilience Corps—a one-year jobs program for adults residing in high-poverty, high-unemployment neighborhoods. The program would work through a network of non-profits and City departments that can put primarily—but not exclusively—young adults to work immediately—at tasks requiring only modest training—to bolster our community's resilience to two of our most urgent crises: climate change and the pandemic.
- C. Manager's Budget Addendum #16, released on May 25, 2021, provides for \$15,850,000 to fund Resilience Corps programs, of which, \$1,120,000 is for the small business Resilience Corps pathway.
- D. The small business Resilience Corps pathway provides Resilience Corps participants with a paid work experience opportunity and training in technology areas such as social media, digital marketing, e-commerce, and website design; after which the youth will be paired with a local San José small business or non-profit to grow their social media and online presence
- E. CITY desires to provide occupational skills training, case management and supportive services to the Resilience Corps small business pathway participants
- F. CONTRACTOR has the necessary professional expertise and skill and is qualified to perform the fiscal agent services.
- G. The purpose of this AGREEMENT is to retain CONTRACTOR to perform those services specified in EXHIBIT A of this AGREEMENT.
- H. CITY's work2future Director ("DIRECTOR"), including the DIRECTOR's authorized designees, are charged with the administration of this AGREEMENT.
- I. These Recitals are incorporated and made a part of this AGREEMENT.

**SECTION 2: PROGRAM COORDINATION**

- A. **CITY:** CITY's DIRECTOR, or his or her designee, shall be the CITY official responsible for the Program and shall render overall supervision of the progress and performance of

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this AGREEMENT by CITY. All services agreed to be performed by CITY shall be under the overall direction of the DIRECTOR.

- B. **CONTRACTOR:** CONTRACTOR shall identify a single project director who shall have overall responsibility for the progress and execution of this AGREEMENT. Such person is identified on the SUMMARY PAGE as CONTRACTOR CONTACT PERSON. Additionally, CONTRACTOR shall immediately notify CITY in writing should circumstances or conditions subsequent to the execution of this AGREEMENT require a substitute CONTRACTOR CONTACT PERSON. CONTRACTOR's CONTACT PERSON and CONTRACTOR staff will fully cooperate with the DIRECTOR relating to the work or services provided hereunder.

**SECTION 3: SCOPE OF SERVICES**

CONTRACTOR shall perform those services as specified in **EXHIBIT A** entitled "Scope of Services," ("SERVICES"), which is attached hereto and incorporated herein.

**SECTION 4: TERM OF AGREEMENT**

The term of this AGREEMENT shall commence on the Start Date and shall expire on the End Date as set forth in the SUMMARY PAGE, unless extended or sooner terminated in accordance with Section 10 of this AGREEMENT, entitled "TERMINATION". Regardless of the date of execution of this AGREEMENT, it is effective as of the Start Date. CONTRACTOR shall not receive payment for work performed prior to the Start Date.

**SECTION 5: COMPENSATION**

- A. CITY agrees to pay CONTRACTOR for SERVICES an amount not to exceed the amount set forth on the SUMMARY PAGE ("COMPENSATION AMOUNT"), subject to the terms and conditions set forth in **EXHIBITS C** and **D** entitled "Budget Summary" and "Payments to CONTRACTOR and Reporting Schedule," which are attached hereto and incorporated herein.
- B. CITY will not pay for unauthorized services rendered by CONTRACTOR or for claimed services which CONTRACTOR has not provided as required by this AGREEMENT.
- C. Pursuant to Section 12 below, neither CITY nor CONTRACTOR shall make any payments in violation of any law existing during the term of this Agreement including, but not limited to, any maximum amount of administrative fee(s). In the event any such payments are made by the CITY, CONTRACTOR will refund to CITY any such payments which were made in violation of law.
- D. CONTRACTOR shall comply with all of the terms and conditions of this AGREEMENT, including the SUMMARY PAGE and all Exhibits and Certifications attached hereto.. If CONTRACTOR fails to comply with any of the terms and conditions of this AGREEMENT, including the SUMMARY PAGE and all Exhibits and Certifications attached hereto, CONTRACTOR shall reimburse CITY from sources other than those received from CITY.
- E. CITY shall pay CONTRACTOR for expenditures claimed to be allowable within forty-five (45) days after timely receipt of CONTRACTOR's properly completed and documented

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invoice, or as soon thereafter as is reasonable, provided CONTRACTOR complies with all terms and conditions of this AGREEMENT. No such payment shall mean or imply that CITY has made a final determination that an expenditure(s) by CONTRACTOR is allowable; nor shall any such payment waive or otherwise limit the rights of federal, state or CITY representatives to review CONTRACTOR's records and recover from CONTRACTOR payments which are not allowable.

- F. DIRECTOR may, without prior notice to CONTRACTOR, at any time in his or her absolute discretion, elect to suspend or terminate payment to CONTRACTOR, in whole or in part, terminate work or expenditures by CONTRACTOR, under this AGREEMENT, or not make any particular payment under this AGREEMENT or take any other action available in the event of any of the following occurrences:
1. If CONTRACTOR (with or without knowledge) has made any material misrepresentation of any nature with respect to any information or statements furnished to CITY in connection with this AGREEMENT.
  2. If there is pending litigation with respect to the performance by CONTRACTOR of any of its duties or obligations under this AGREEMENT which may materially jeopardize or adversely affect the undertaking of or the carrying out of SERVICES.
  3. If CONTRACTOR, without having obtained CITY approval, has taken any action pertaining to SERVICES which requires CITY approval.
  4. If CONTRACTOR makes improper use of the COMPENSATION AMOUNT.
  5. If CONTRACTOR fails to comply with any of the terms and conditions of this AGREEMENT including without limitation, CONTRACTOR's failure to carry out the SERVICES or other obligations as described in any Exhibit to this AGREEMENT.
  6. If CONTRACTOR submits to CITY any report which is incorrect or incomplete in any material respect, or is untimely.

**SECTION 6: INDEPENDENT CONTRACTOR**

It is understood and agreed that CONTRACTOR in the performance of this AGREEMENT, shall not act nor is it at any time authorized to act, as the agent or representative of CITY in any matter. CONTRACTOR further agrees that it will not in any manner hold itself out as the agent or representative of CITY or act in such a fashion as would give the impression to a reasonable person that CONTRACTOR is acting in such a capacity.

It is understood and agreed that CONTRACTOR and CONTRACTOR's employees, in the performance of this AGREEMENT, shall act as and be an independent contractor and not an agent or employee of CITY, and as an independent contractor, CONTRACTOR shall obtain no rights to retirement benefits or other benefits which accrue to CITY's employees, and CONTRACTOR and CONTRACTOR's employees hereby expressly waive any claim it/they may have to any such rights.

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**SECTION 7: SUBCONTRACTING/ASSIGNABILITY**

The parties agree that the expertise and experience of CONTRACTOR are material considerations for this AGREEMENT. CONTRACTOR shall not assign or transfer any interest in this AGREEMENT nor the performance of any of CONTRACTOR's obligations hereunder, without the prior written consent of CITY. In the event CITY determines that any of the rights, duties or obligations under this AGREEMENT have been subcontracted or assigned to another vendor or CONTRACTOR by CONTRACTOR, without the written consent of CITY, then CITY may exercise its right to take any appropriate remedy identified in Section 10, entitled "TERMINATION", including without limitation, termination of the entire AGREEMENT.

CONTRACTOR'S subcontracts that involve the exchange of funds shall detail the correlation between the services to be provided and the contract goals to be met.

**SECTION 8: INDEMNIFICATION AND HOLD HARMLESS**

CONTRACTOR shall defend, indemnify and hold harmless CITY, its officers, employees and agents against any claim, loss, or liability arising out of or resulting in any way from work performed under this AGREEMENT due to the willful or negligent acts (active or passive) or omissions by CONTRACTOR's officers, employees or agents. The acceptance of said services and duties by CITY shall not operate as a waiver of such right of indemnification. CONTRACTOR's obligations under this indemnification provision shall survive the expiration or termination of this AGREEMENT.

**SECTION 9: INSURANCE**

CONTRACTOR agrees to have and maintain the policies set forth in **EXHIBIT G**, entitled "INSURANCE" which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by CITY's Risk Manager as to form and content. These requirements are subject to amendment or waiver if so approved in writing by Risk Manager. CONTRACTOR agrees to provide CITY with a copy of said policies, certificates and/or endorsements before work commences under this AGREEMENT.

**SECTION 10: TERMINATION**

This AGREEMENT may be terminated in whole or in part under any of the following circumstances:

- A. Termination for Convenience. CITY may, through DIRECTOR, terminate this AGREEMENT without cause by giving CONTRACTOR thirty (30) calendar days written notice.
- B. Termination for Cause. Each of CONTRACTOR's obligations under this AGREEMENT shall be deemed material. If CONTRACTOR fails to perform any of its obligations under this AGREEMENT, or any other agreement with CITY, CITY may terminate this AGREEMENT upon ten (10) days advance notice ("Notice Period") to CONTRACTOR, specifying CONTRACTOR's breach and providing CONTRACTOR with the opportunity to cure the specified breach within the Notice Period or in those instances where the specified breach cannot reasonably be cured within the Notice Period, the opportunity to commence to cure the specified breach. In the event CONTRACTOR fails to cure or to commence to cure the specified breach within the Notice Period, this AGREEMENT shall

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be terminated. Without limiting the generality of the foregoing, the occurrence of any one of the following events shall constitute a default of this AGREEMENT for which CITY may exercise its right of termination:

1. CONTRACTOR's breach of any of the representations or warranties contained in this AGREEMENT;
  2. The occurrence of any of the events set forth in SECTION 5 for suspension or termination of CITY's payment of the COMPENSATION AMOUNT.
- C. Termination for Unavailability of Funds. In the event of reduction, suspension, discontinuance or other unavailability of funds, CITY unilaterally may take appropriate action(s) including, but not limited to, immediately canceling or reducing existing service authorization, stopping or reducing further referrals of individuals, and/or reducing the maximum dollar amount of this AGREEMENT. CITY shall give CONTRACTOR no less than sixty (60) business days' advance written notice of the action(s) CITY intends to take as a result of the unavailability of funds. CITY shall not be liable for start-up costs, or lost profits in the event of early termination.
- D. In the event of termination under this section, CONTRACTOR shall have the following obligations:
1. No later than thirty (30) days following the date of termination, CONTRACTOR shall refund to CITY any unused portion of the COMPENSATION AMOUNT, including interest accrued, except that CONTRACTOR shall have no obligation to refund to CITY any portion of the COMPENSATION AMOUNT spent as of the date of termination in accordance with the terms of the AGREEMENT. CONTRACTOR shall also provide CITY with a written report detailing the expenditures, if any, from the COMPENSATION AMOUNT, including an accounting of its administrative expenses to the date of termination.
- Nothing in this AGREEMENT shall be deemed to be a waiver of CITY's right to recover from CONTRACTOR any portion of the COMPENSATION AMOUNT that has not been spent in accordance with this AGREEMENT. Upon receipt, CONTRACTOR will be paid for services performed and reimbursable expenses incurred in compliance with the terms of this AGREEMENT to date of termination.
2. Upon termination, CONTRACTOR shall immediately deliver to CITY any and all copies of materials used or developed including, but not limited to, all data collection forms, reports, studies and other work performed, whether or not completed by CONTRACTOR or CONTRACTOR's subcontractor, if any, under this AGREEMENT.
- E. CITY's DIRECTOR is authorized to terminate this AGREEMENT on CITY's behalf.
- F. If the term of this AGREEMENT is more than one year, the funding in any year after the first year may be contingent upon past and pending performance as well as future appropriation by the City Council of the City of San José, in its sole discretion.



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- G. CITY may, at its sole option, pursue a course correction process with CONTRACTOR to address issues with CONTRACTOR's performance under this AGREEMENT. However, CITY is under no obligation to pursue a course correction prior to exercising its rights to suspend payment to CONTRACTOR or to terminate this AGREEMENT. Nothing in this AGREEMENT shall be construed so as to deprive CITY of its rights and remedies at law or in equity against CONTRACTOR.

**SECTION 11: GOVERNING LAW / 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 12: COMPLIANCE WITH LAWS; CONFLICT OF TERMS**

CONTRACTOR shall comply with the applicable requirements of the American Rescue Plan Act (ARPA), and with applicable regulations, policies, guidelines, Office of Management and Budget (OMB) circulars, and field memoranda promulgated by United States Department of Labor (DOL), the State of California and CITY, and/or any legislation which may replace the ARPA Act, and all other applicable federal, state and local rules, regulations and laws. Moreover, neither CITY nor CONTRACTOR shall make any payments that would be in violation of any law existing during the term of this Agreement, including but not limited to any maximum amount of administrative fee(s). Without limiting the generality of the preceding sentence, CONTRACTOR shall comply with the provisions of CITY's Business Tax Ordinance in Chapter 4.76 of the San José Municipal Code.

**SECTION 13: ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY**

CONTRACTOR agrees that, in the performance of this AGREEMENT, CONTRACTOR shall perform its obligations under the AGREEMENT in conformance with City Council Policy 4-6, Environmentally Preferable Procurement Policy. A description for environmentally preferable procurement and the policy can be found on the CITY's website at the following link: <https://www.sanjoseca.gov/your-government/environment/business-school-resources/for-schools/environmentally-preferable-procurement> .

Environmental procurement policies and activities related to the completion of work will include wherever practicable, but are not limited to:

1. 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.);
2. Use of Energy Star Compliant equipment;
3. Vehicles and vehicle operations (i.e. Alternative Fuel, Hybrid, etc.);
4. Internal waste reduction and reuse protocol(s); and
5. Water and resource conservation activities within facilities, including bans on individual serving bottled water and the use of compostable food service products, etc.

**SECTION 14: OWNERSHIP OF MATERIALS; APPLICANT/CLIENT REPORTS**

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CONTRACTOR agrees that it shall provide to CITY information regarding applicants or clients who applied for or received services under this AGREEMENT as needed for reporting and tracking required by funding source and other applicable federal and state laws. Such information shall be reported in a format that does not identify the individual applicant or client. Training information or reports assembled by CITY from information provided by CONTRACTOR, including, but not limited to, the number of clients enrolled; the number of clients that have completed training; and the number of clients who have entered employment in the area in which they have been trained is the property of CITY without restriction or limitation upon their use including the publication of such information.

**SECTION 15: RECORDS**

CONTRACTOR shall be solely responsible to implement internal controls and record keeping procedures that comply with this AGREEMENT and all applicable laws. CONTRACTOR's administrative, programmatic and financial records pertaining to the Program, or the AGREEMENT collectively, must sufficiently support the determination that expenditures are allowable. CONTRACTOR shall retain all records pertinent to this AGREEMENT for a period of five (5) years from the date of final payment for each fiscal year. CONTRACTOR shall retain such records beyond five (5) years so long as any litigation, audit, dispute or claim is pending.

**SECTION 16: MONITORING/AUDITS**

CONTRACTOR agrees that the CITY's Manager, Auditor, Attorney or the Director, or any of their duly authorized representatives, shall have access to and the right to examine all facilities and activities of CONTRACTOR related to CONTRACTOR's performance of this AGREEMENT, including the right to audit, conduct further financial review, examine and make excerpts or transcripts of all contracts, subcontracts, invoices, payroll records, personnel records, and all other data or financial records relating to matters covered by this AGREEMENT at any time during the term of this AGREEMENT. CONTRACTOR shall cooperate with the CITY in such audit, examination, further review and shall provide CITY with access to CONTRACTOR's staff and to all relevant records, documents, and data, including but not limited to, management letters, board minutes, and payroll.

CONTRACTOR shall comply with any audits by appropriate monitoring agencies at CONTRACTOR's sole expense. The CITY may monitor the CONTRACTOR once per year, which shall include a desk review and an annual site visit. CONTRACTOR shall submit an audit report within thirty (30) days in the event the AGREEMENT is terminated, voluntarily or involuntarily, before the end of the term. CONTRACTOR shall pay to CITY, from neither CITY nor federal funds, the full amount of liability resulting from disallowances or other audit or monitoring exceptions which are attributed to CONTRACTOR's error, omission, or violation of any provision of this AGREEMENT.

**EXHIBIT B**, "MONITORING, EVALUATION AND REPORTING REQUIREMENTS" sets forth additional standards regarding the CITY's right to audit, and CONTRACTOR's obligation to deliver to the CITY reports which may include audited financial reports. CONTRACTOR further agrees that CONTRACTOR shall preserve all records related to the performance of this AGREEMENT and that CITY's right to examine or audit the CONTRACTOR's records, facilities or activities shall continue as specified in **EXHIBIT B**.

**SECTION 17: WAIVER**

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CONTRACTOR agrees that waiver by 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 by CITY of the performance of any work or services by CONTRACTOR shall not be deemed to be a waiver of any term or condition of this AGREEMENT.

**SECTION 18: CONFLICT OF INTEREST**

CONTRACTOR shall avoid all conflict of interest or appearance of conflict of interest in performance of this AGREEMENT. CONTRACTOR 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. CONTRACTOR 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 19: GIFTS**

- A. CONTRACTOR is 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. CONTRACTOR agrees 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 CONTRACTOR. 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 10 of this AGREEMENT.

**SECTION 20: DISQUALIFICATION OF FORMER EMPLOYEES**

CONTRACTOR is familiar with the provisions relating to the disqualification of former officers and employees of CITY in matters which are connected with former duties or official responsibilities as set forth in Chapter 12.10 of the San José Municipal Code ("Revolving Door Ordinance"). CONTRACTOR shall not utilize either directly or indirectly any officer, employee, or agent of CONTRACTOR to perform services under this AGREEMENT, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

**SECTION 21: NOTICES**

All notices and other communications required or permitted to be given under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, to the respective parties addressed as referenced on the SUMMARY PAGE of this AGREEMENT.

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

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**SECTION 22: CITY ACKNOWLEDGMENT**

CONTRACTOR shall acknowledge the support of CITY, where appropriate, in written documents and informational materials regarding the Program.

**SECTION 23. INTERPRETATION, PRIOR AGREEMENTS AND AMENDMENTS**

This AGREEMENT, including the SUMMARY PAGE and all Exhibits and Certifications attached hereto, represents the entire understanding of the parties as to those matters contained herein. In the event that the terms specified in the SUMMARY PAGE or any of the Exhibits and Certifications attached hereto conflict with any of the terms specified in the body of this AGREEMENT, the terms specified in the body of this AGREEMENT shall control. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may be modified only by a written amendment duly executed by the authorized representative of the respective parties to this AGREEMENT.

**SECTION 24. NO THIRD PARTY RIGHTS**

This AGREEMENT does not constitute a binding commitment to any client or agency except CITY and CONTRACTOR. No third party rights are created for clients or other individuals.

**SECTION 25: SEVERABILITY OF PROVISIONS**

If any part of this AGREEMENT is for any reason found to be unenforceable by a court of competent jurisdiction, all other parts nevertheless remain enforceable. CITY and CONTRACTOR agree that to the extent that the exclusion of any unenforceable provisions from this AGREEMENT affect the purpose of this AGREEMENT, then the parties shall negotiate an adjustment to this AGREEMENT in order to give full effect to the purpose of this AGREEMENT or either party may terminate this AGREEMENT. In the event of termination, the provisions of SECTION 10 as related to repayment of the COMPENSATION AMOUNT shall apply.

**SECTION 26: CORPORATE AUTHORITY/AUTHORIZED REPRESENTATIVES**

CONTRACTOR represents and warrants that it has the authority to enter into this AGREEMENT. CONTRACTOR further represents and warrants that its signatory to this AGREEMENT is authorized to execute this AGREEMENT on CONTRACTOR's behalf.

**SECTION 27: EMPLOYEES/VOLUNTEERS**

- A. Any and all personnel employed or volunteers retained by CONTRACTOR in conducting the operations of CONTRACTOR's Program shall be qualified to perform the duties assigned to them by CONTRACTOR.
- B. CONTRACTOR shall not hire employees or volunteers who will have supervisory or disciplinary authority over minors who have been convicted of any offense identified in California Public Resources Code Sections 5164. CONTRACTOR shall fully indemnify, defend, and hold harmless CITY for any such hiring. CONTRACTOR shall notify CITY in writing of any violation of this provision as soon as is reasonably practicable.

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- C. CONTRACTOR shall also not employ any person who is permitted to provide services requiring contact with children or providing food concessionaire services or other licensed concessionaire services in that area, unless CONTRACTOR has complied with the tuberculosis testing requirements set forth in Section 5163 of the California Public Resources Code.
- D. Regardless of whether services have been provided prior to full execution of this AGREEMENT, CONTRACTOR certifies to the CITY that all services were provided in full compliance with the terms and provisions of this AGREEMENT.
- E. To give effect to California Public Resources Code Sections 5163 and 5164, CONTRACTOR shall follow the procedures contained in **EXHIBIT F** attached hereto if applicable. In the event CONTRACTOR chooses a different national criminal database for complying with the FBI requirement for background checks, then such alternative database shall be subject to the CITY's prior written approval.

**SECTION 28: CONTRACTOR'S FINANCIALS.**

- A. City Council requires that each non-profit organization receiving \$320,000 or more in funds from the CITY (in the aggregate) during any fiscal year which is either (i) grant funding other than construction funding and/or (ii) operating subsidy funding for operation of CITY facilities, must prepare and make available for public view on the internet, annual audited financial statements. The audited financial statements must be made available for view within six months of the end of the organization's fiscal year (which period may be extended by the City Manager based upon a showing of hardship or other good cause) and must be submitted to the Workforce Development Board and posted on the organization's website at an easy access location. All audits must be performed by a certified public accountant currently licensed to practice in the State of California, must conform to generally accepted auditing standards and otherwise be in a form acceptable to the CITY.
- B. Non-profits shall be required to comply with this requirement at the time that the non-profit has entered into one or more grant agreements or subsidy agreements with the CITY which provide for the payment of an aggregate amount that equals or exceeds \$320,000 in grant and/or subsidy funds in any one fiscal year. Non-profits covered by this requirement must exert due diligence in determining when they have reached the aggregate funding threshold of \$320,000. The provisions of the financial posting requirements shall be interpreted broadly to effectuate the purpose of making available to the public information on recipients of substantial CITY funds. These provisions shall apply not only to grant agreements or operating agreements but shall also apply, without limitation, if any amendments to such agreements brings the total annual funding to equal or exceed \$320,000, and also to any other agreements with the CITY that are equivalent in purpose to a grant agreement or an operating subsidy agreement, regardless of the title of the agreement.
- C. This posting requirement shall remain in effect until an entire fiscal year passes in which the non-profit does not have contracts with the CITY which provide for grants and/or subsidies from the CITY in an aggregate amount equaling or exceeding \$320,000. Without limitation of any other remedy, CONTRACTOR's failure to comply with this

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requirement may be taken into consideration when evaluating CONTRACTOR's request for future grant funds or subsidies.

- D. Organizations receiving an aggregate amount \$25,000 or more in funds from the CITY during any fiscal year which is either (i) grant funding other than construction funding and/or (ii) operating subsidy funding for operation of CITY facilities, will, upon request by CITY, prepare and submit via The CITY's WebGrants grant management system, ("WebGrants"), a completed Financial Dashboard. CITY's project director will provide a Financial Dashboard template upon request. The Financial Dashboard must be submitted via WebGrants within six (6) months from the end of CONTRACTOR's Fiscal Year.

**SECTION 29: EXECUTION IN 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.

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**EXHIBIT A**

**SCOPE OF SERVICES**

CONTRACTOR shall provide to CITY the services as set forth below. CITY agrees to work closely with CONTRACTOR staff and its partners in the performance of Services and shall be available to CONTRACTOR's staff and partners at all reasonable times. In providing such services to CITY, CONTRACTOR is not exercising any control over the wages, hours, or working conditions of any PARTICIPANT. CITY agrees and represents that CONTRACTOR and CITY are not acting as a joint employer with respect to the PARTICIPANTS whom CONTRACTOR employs during the period of this Agreement in performance of the outlined responsibilities listed below.

**A. CONTRACTOR Responsibilities**

1. CONTRACTOR shall assume responsibility, as the employer of record for the PARTICIPANTS.
2. CONTRACTOR shall be responsible for payment of wages, as reported by CITY, through the CONTRACTOR's payroll, including making the appropriate deductions, withholdings, and premium payments under applicable federal, state, and local laws.
3. CONTRACTOR shall be responsible for providing workers' compensation insurance coverage that covers the PARTICIPANTS, as well as processing and defending all workers' compensation claims made by PARTICIPANTS.
4. CONTRACTOR shall be responsible for managing and tracking PARTICIPANT leaves of

absence, as may be required by law.

5. Upon CITY's written request, CONTRACTOR will conduct a background check for PARTICIPANTS requested by CITY for an additional fee.

**B. Services provided by CONTRACTOR**

<b>Deliverable</b>	<b>Description</b>
On-Boarding Assistance	Virtual and onsite orientation sessions lead by the CONTRACTOR. Single point of contact for new hire paperwork. Streamlined and electronic tools to assist with hiring. Maintain personnel records.
Employee Relations Issues	Respond to all day-to-day employee relations issues and employee/supervisor inquiries regarding Policies and Procedures. Provide coaching, guidance, and legal assistance with employee relations issues with supervisors / manager(s), Workforce Development, and Legal staff. Initiate communication with employee to address and resolve issue.
Payroll Services	Manage and maintain the Human Resource Information System (HRIS) and processing of new hires, salary increases, promotions, transfers and terminations for the Program. On-line timekeeping training for students, supervisors, and contract manager(s). Tax documentation and information.

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Leave Management	Single point of contact for administrative and medical leaves of absence. Generate paperwork, track time out of the office, and facilitate/manage communication between the employee and supervisor. Liaison between individual and Employment Development Department (EDD) for State Disability Insurance (SDI) and Paid Family Leave (PFL) insurance/payments.
Workers' Compensation Claims	Single point of contact for workers' compensation claims. Generate paperwork, track time out of the office, and facilitate communication between the employee and supervisor. Liaison between employee and insurance carrier for workers' compensation insurance/payments.
Unemployment	Single point of contact for unemployment claims, generate paperwork, and serve as the liaison between employee and EDD for unemployment payments.

**C. CITY Responsibilities**

1. CITY shall have the responsibility for the day-to-day control and supervision of PARTICIPANTS and must provide PARTICIPANT with supervision, training, and work assignments in accordance with the WORK SITE request and job description.
2. CITY shall allow for monitoring visits by representatives of the CONTRACTOR and shall ensure that WORK SITES will allow for monitoring visits by representatives of the CONTRACTOR should the CONTRACTOR elect to perform an inspection.
3. CITY will notify CONTRACTOR if any position is subject to any state, federal or local minimum or prevailing wage requirements, or subject to the terms of a collective bargaining agreement.
4. If PARTICIPANTS will be working at WORK SITES not under the direction and control of CITY, CITY shall have a signed "Work Site Agreement" with the WORK SITE. CITY shall use the Work Site Agreement Template in Exhibit H, attached to this Agreement and herein incorporated by reference, as its Work Site Agreement with each site. CONTRACTOR in its sole discretion may deny placement of PARTICIPANTS at any WORK SITE, if CONTRACTOR deems the WORK SITE to be unsafe or non-compliant with State, Local, or Federal law.
5. Without the prior written agreement of CONTRACTOR, CITY will not entrust PARTICIPANTS with the care of unattended premises, or unsupervised custody or control of cash, credit cards, valuables, or other similar property.
6. CITY shall ensure PARTICIPANTS receive meal and rest breaks in compliance with both California Law and the CONTRACTOR's Policy and Procedures manual. CITY agrees to accurately track and provide to CONTRACTOR a time record for all hours worked by each PARTICIPANT on a bi-weekly basis. The time record shall include all of the PARTICIPANT's start and end times, as well as meal period and rest breaks. CITY will be responsible for ensuring PARTICIPANTS enter and approve accurate timesheets. Billed rates will be increased to reflect overtime hours worked, waiting time penalties, and meal period premiums according to state or local law.
7. The PROGRAM is not anticipated to include PARTICIPANTS under the age of 18. If any PARTICIPANTS are under the age of 18, the CITY will ensure that PARTICIPANTS who are under the age of 18 do not exceed 8 hours per day or 40 hours per week. If PARTICIPANTS over the age of 18 do exceed 8 hours per day or 40 hours per week, CITY will be responsible for payment of overtime to the PARTICIPANT. CITY will



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ensure that no PARTICIPANT exceeds 650 hours total. This number cannot exceed 1000 hours per PARTICIPANT per fiscal (July- June) year, unless classified as a Student Assistant with CITY and CONTRACTOR approval.

8. CITY shall provide a detailed job description prior to the start date for each PARTICIPANT. This will allow the CONTRACTOR to apply an accurate Worker's Compensation Rate to be billed to CITY.

**D. Compliance with Federal, State, and Local Laws**

1. CITY must provide all legally required documents prior to PARTICIPANTS' start date including, but not limited to: PARTICIPANT Form I-9s and work permits for PARTICIPANTS under the age of 18.
2. CITY shall certify that WORK SITE provides a drug-free workplace, required by the California Drug-Free Workplace Act of 1990 (Government Code section 8350 et seq.).
3. CITY and WORK SITE shall comply with all applicable federal, state and local laws and regulations relating to a safe and accessible work environment, including but not limited to, federal and state Occupational Safety and Health Administration ("OSHA") laws and regulations, including the recording of workplace injuries on CITY's OSHA 300 logs.
4. CITY and WORK SITE shall comply with the requirements of the Fair Labor Standards Act, the California Labor Code, the California Industrial Wage Orders, Title VII of the Civil Rights Act of 1964, the Fair Employment and Housing Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and all other federal, state, and local laws and regulations governing the hiring or employment of PARTICIPANT.

**E. Worker's Compensation and Employment Claims**

1. CITY shall immediately notify CONTRACTOR of any injury and/or Workers' Compensation Claims related to a PARTICIPANT.
2. CITY shall promptly report to CONTRACTOR any claims of harassment, discrimination, and/or claims of any violation of law governing the PARTICIPANT's employment, including allegations or reports of any irregularities or discrepancies by PARTICIPANT.
3. CITY shall notify the CONTRACTOR if a PARTICIPANT will be allowed to operate any motor vehicle or heavy equipment at any time as part of his/her work/training activities. CITY must secure CONTRACTOR's written approval prior to PARTICIPANT's use of motor vehicles or heavy equipment.

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**EXHIBIT B**

**MONITORING, EVALUATION AND REPORTING REQUIREMENTS**

**A. Fiscal Responsibilities of CONTRACTOR.** CONTRACTOR shall:

1. Appoint and submit to CITY the name of a fiscal contact who shall be responsible for the financial and accounting activities of the CONTRACTOR, including the receipt and disbursement of CONTRACTOR funds.
2. Document all costs by maintaining complete and accurate records of all financial transactions, including but not limited to, contracts, invoices, time cards, cash receipts, vouchers, canceled checks, bank statements and/or other official documentation, evidencing in proper detail the nature and propriety of all charges.
3. Submit to City at such times and in such forms as City may require, such statements, records, reports, data, and information pertaining to matters covered by this Agreement.

**B. Reporting.**

CONTRACTOR shall

1. CONTRACTOR shall assist CITY in meeting any reporting requirements to the State and other agencies.
2. CONTRACTOR shall also promptly advise the CITY of any notice of any violation of local, State, or Federal law or regulation, including but not limited to: 1) the issuance of any legal complaint by an enforcement agency, or any enforcement proceedings by any Federal, State or local agency for alleged violations of Federal, State or local rules, regulations or laws; and/or 2) the issuance of citations, court findings or administrative findings for violations of applicable Federal, State or local rules, regulations or laws.

**C. Evaluation of CONTRACTOR.**

Authorized Federal, State, and CITY representatives shall have the right to monitor, assess, or evaluate CONTRACTOR's performance pursuant to this AGREEMENT by any means including, but not limited to, inspections of premises, records, reports, audits and interviews with CONTRACTOR staff and participants.

CITY performance evaluation and monitoring may, at CITY's discretion, take place virtually by means of CITY monitor(s) reviewing submitted monthly update reports. CITY may at its sole discretion, request back up documentation for any GRANTS.

**D. Records and Audits of CONTRACTOR.**

1. Establishment and Maintenance of Records. CONTRACTOR shall maintain records, including but not limited to, books, financial records, supporting documents, statistical records, personnel, property, and all other pertinent records sufficient to reflect properly:
  - a. All direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this AGREEMENT; and

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- b. All other matters covered by this AGREEMENT. Such records shall be maintained in accordance with requirements now or hereafter prescribed by the CITY.
2. Preservation of Records. CONTRACTOR shall preserve and make available its records:
- a. for the period of five(5) years from the expiration date of this Agreement; or
  - b. for such longer period, if any, as may be required by applicable law; or
  - c. if this Agreement is completely or partially terminated, for a period of five (5) years from the date of any resulting final settlement.
  - d. Examination of Records and Facilities. At any time during normal business hours, upon advance written notice and as often as may be deemed necessary, CONTRACTOR agrees that City, and/or any of its respective authorized representatives shall have access to and the right to examine any of its plants, offices and/or facilities engaged in performance of this Agreement and all its records with respect to all matters covered by this Agreement. CONTRACTOR also agrees that the City, or any of its authorized representatives, shall have the right to audit, examine, and make excerpts or transcripts of and from such records, and to make audits of all contracts and subcontracts, invoices, payrolls, records of personnel, conditions of employment, materials, and all other data relating to matters covered by this Agreement. City may examine records or facilities pursuant to this Section throughout the term of this Agreement and
  - e. for a period of five (5) years after final payment under this Agreement; or,
  - f. for such longer period as may be required by applicable law; or
  - g. if this Agreement is completely or partially terminated, for a period of five (5) years from the date of any resulting settlement.
3. Audits.
- a. CONTRACTOR agrees to satisfy the audit requirements for sub-recipients of federal financial assistance in accordance with applicable OMB Circular(s) and Federal Register publications.
  - b. CONTRACTOR shall submit an audit report within one (1) month in the event the AGREEMENT is terminated, voluntarily or involuntarily, before the end of the term.
  - c. CONTRACTOR, at its own expense, shall accept responsibility for receiving, responding to and complying with any audit exceptions by appropriate monitoring agencies. CONTRACTOR shall also fully cooperate as requested by CITY in any audit or monitoring related process including, but not limited to, the provision of adequate staff for organizing CONTRACTOR records and testimony at any related administrative or court proceedings.
  - d. CONTRACTOR shall pay to CITY, from neither CITY nor Program funds, the full amount of liability resulting from disallowance or other audit or monitoring exceptions

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which are attributed to CONTRACTOR's error, omission, or violation of any provision of this Agreement.

- e. CONTRACTOR shall, at CITY's option and at CONTRACTOR's sole cost, defend, indemnify, hold harmless against any claim or liability for such costs, and shall cooperate fully with CITY by providing all witnesses, documents and other information requested by the CITY in any civil court proceeding or any formal or informal administrative proceeding conducted in connection with such costs.

4. Independent Audit Reports.

- a. If CONTRACTOR expends \$750,000 or more in a year in Federal funds, CONTRACTOR shall submit an audit report that conforms to the requirements of OMB Circular A-133 for Non-Profit Institutions. Funds may be set aside in CONTRACTOR's budget in an amount equal to City's fair share of the CONTRACTOR's cost of an A-133 independent audit, if required.
  - a. The audit report shall ascertain and determine that no services provided by the CONTRACTOR under this AGREEMENT are duplicative of services provided to another agency from which CONTRACTOR receives funding and are not being reimbursed from funding received from another agency.
  - b. CONTRACTOR shall enter into an agreement with an outside auditor no later than sixty (60) days before the end of each Fiscal Year calling for the financial and compliance audit of CONTRACTOR's Fiscal Years that are covered by this Agreement. The written agreement may be in the form of an engagement letter prepared by the auditor and approved by CONTRACTOR.
  - c. An audit report must be completed and posted in PDF format on WebGrants within six months of the end of each of the CONTRACTOR's Fiscal Years covered by this AGREEMENT. If this AGREEMENT expires or is terminated on a date that occurs after the period covered by the foregoing audit, CONTRACTOR shall deliver an audit report within two hundred and fifty (250) days after the expiration or termination of this AGREEMENT auditing the period not covered by the prior audit.
  - d. Should CONTRACTOR not enter into an agreement with an outside auditor or should an audit not be done on a timely basis, the City, at its discretion, may enter into an agreement with an independent auditor to do the audit at CONTRACTOR's expense.
  - e. The CONTRACTOR shall submit to the City copies of management letters the auditor prepares for the CONTRACTOR as part of the audit engagement.
  - f. All audits must be performed by Certified Public Accountants currently certified and licensed to practice in the State of California. CONTRACTOR must have Auditor's proof of current licensing on file in CONTRACTOR's office. CONTRACTOR must submit to the CITY, a copy of Auditor's certification to practice in California with the audit.

- 5. City Audits. The CITY may perform an independent audit. Such audits may cover programmatic as well as fiscal matters. CONTRACTOR will be afforded an opportunity to

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respond to any audit findings, and have the responses included in the final audit report. Costs of such audits will be borne by the CITY.

6. Disallowed Costs. CONTRACTOR is liable for repayment of disallowed costs as determined by CITY. CONTRACTOR shall make best effort to recover disallowed costs due to unallowable use of GRANT by CONTRACTOR. Disallowed costs may be identified through audits, monitoring or other sources. CONTRACTOR shall be afforded the opportunity to respond to any adverse findings that may lead to disallowed costs. CITY shall make the final determination of disallowed costs.

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**EXHIBIT C**

**BUDGET SUMMARY**

<b>Service Component</b>	<b>Cost</b>
Wages: 20 employees, at current living wage of \$25.31 per hour, 650 hours	\$329,030
11% Taxes: Federal/State Unemployment, Social Security, MediCare, ETT	\$36,193
8% Workers' Compensation (estimate; invoiced on actuals)	\$26,322
<b><i>Total Personnel Costs</i></b>	<b><i>\$391,545</i></b>
<b>Additional Services</b>	<b>Cost</b>
Background Checks (\$22.50/employee)	\$450
<b>Career Catalyst Fees</b>	<b>Cost</b>
Onboarding Fee (\$100/employee, invoiced at time of hire)	\$2,000
15% Indirect Rate (invoiced on additional services, actual wages and taxes paid)	\$58,799
<b>TOTAL</b>	<b>\$452,794</b>

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**EXHIBIT D**

**PAYMENTS TO CONTRACTOR AND REPORTING SCHEDULE**

Payment shall be made as stated in the following schedule, subject to CONTRACTOR's satisfactory performance of this AGREEMENT as approved by CITY.

**A. Maximum Amount of Compensation**

CITY agrees to pay CONTRACTOR the COMPENSATION AMOUNT subject to the terms and conditions of this AGREEMENT. This Agreement is a combination of GRANT FUNDS that CONTRACTOR shall disburse to or on behalf of PARTICIPANTS and Administrative fees to CONTRACTOR. Compensation shall be apportioned as follows:

**1. Grant Funds**

The maximum amount to be paid to CONTRACTOR by CITY for the Services shall be \$393,995 including applicable taxes. CITY will be responsible for all costs incurred by PARTICIPANTS under this Agreement. If PARTICIPANTS incur costs that exceed the contract value, CITY is responsible for those costs. These costs include any cost the CONTRACTOR is obligated to pay PARTICIPANTS under State, Local, or Federal law.

**a. Invoicing and Payment**

- i. For services satisfactorily rendered, and upon receipt and approval of the invoices, CITY agrees to compensate CONTRACTOR for actual expenditures incurred in accordance with the rates specified herein.
- ii. Itemized invoices shall be submitted via email on a bi-weekly basis to:

Baljinder Jhalle  
[baljinder.jhalle@sanjoseca.gov](mailto:baljinder.jhalle@sanjoseca.gov)  
work2future Business and Administration Services  
5730 Chambertin Drive  
San Jose, CA 95118

**b. Billing Rate**

CITY will be invoiced biweekly and will pay CONTRACTOR based upon a specified billing rate, which is composed of the following:

- i. CITY is billed for the PARTICIPANT's hourly rate, including any overtime or premium payments owed to the PARTICIPANT plus employer payroll taxes (Reference budget). The actual percentage for employer tax is determined based upon assigned workers compensation codes;
- ii. The maximum amount in Section A 1 above includes a \$100 onboarding fee per PARTICIPANT, which is invoiced at the time of hire.
- iii. CITY is responsible for compensating the CONTRACTOR for any services performed or employee benefit cost incurred by a participant that are not listed in Exhibit A of the Agreement but are required under local, State and Federal law.

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- iv. The maximum amount in Section A 1 above includes reimbursement to the CONTRACTOR for Additional Services such as criminal history background checks, live scans, or any other pre-employment screening that is requested by CITY.

**2. Administrative fees:**

- a. CITY is billed a 15% indirect cost recovery rate of the total costs described in Section A 1 above, in the amount of \$58,799, to cover administrative costs associated with facilitating the Services.
- b. **Certification Required for Fiscal Reports or Invoices.** Pursuant to 2 C.F.R. §200.415, annual and final fiscal reports or vouchers requesting payment under this AGREEMENT must include a certification, signed by an official who is authorized to legally bind CONTRACTOR, which reads as follows: “By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729–3730 and 3801–3812).”



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**EXHIBIT E**

**GENERAL GRANT PROVISIONS**

**A. Non-Discrimination.**

CONTRACTOR is prohibited from discriminating on the ground of race, color, creed, religion, sex, sexual orientation, actual or perceived gender identity, marital status, family status (minor children or no minor children), national origin, ancestry, age, disability, political affiliation or belief, and for participants only, citizenship or participation in programs or activities funded under this AGREEMENT, in admission or access to, opportunity or treatment in, or employment in the administration of, or in connection with, any program or activity funded under this AGREEMENT.

As a condition to the award of financial payment under this Program, CONTRACTOR assures, with respect to operation of this funded Program or activity and all agreements or arrangements to carry out this Program or activity, that it will comply fully with all nondiscrimination and equal opportunity statutes and regulations including, but not limited to, the following: Title VI and VII of the Civil Rights Act of 1964, as amended; Americans with Disabilities Act of 1990, as amended; Section 504 of the Rehabilitation Act of 1973; Title IX of the Education Amendments of 1972; Age Discrimination Act of 1975; California Fair Employment and Housing Act, Government Code Sections 12900 et seq.; California Labor Code Sections 1101, 1102, and 1102.5; Executive Orders 11246 and 11375 supplemented in Department of Labor Regulation 41 C.F.R. Part 60; 29 C.F.R. Part 37, and with all applicable requirements imposed by or pursuant to regulations implementing those laws. Federal, state, and local governments shall have the right to seek judicial enforcement of this nondiscrimination assurance.

**B. Accessibility.**

CONTRACTOR shall comply with all applicable laws and regulations including, without limitation, the Americans with Disabilities Act (ADA), as it applies to CONTRACTOR, and those laws that govern health and safety and prevention of unhealthy conditions.

**C. Prohibited Activities; Debarment and Suspension; Lobbying Restrictions.**

CONTRACTOR shall comply with the applicable federal regulations prohibiting activities relating to political lobbying, sectarian, and pro- or anti- unionization activities. CONTRACTOR shall also comply with reporting requirements related to fraud, abuse, or criminal activities and certifications regarding lobbying (CERTIFICATION 1.2); and debarment, suspension and other related matters (CERTIFICATION 1.1), to the extent these are applicable and in accordance with Executive Orders 12549 and 12689.

**D. Drug-Free Workplace.**

CONTRACTOR assures and certifies under penalty of perjury that it will comply with the requirements of the government-wide requirements for a drug-free workplace codified in DOL Regulations, including but not limited to, 29 C.F.R. Part 94 and the State of California's Drug-Free Workplace Act of 1990 (Government Code §§ 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by

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Government Code § 8355(a)(1).

2. Establish a Drug-Free Awareness Program as required by Government Code § 8355(a)(2) to inform employees about all of the following:
  - a. The dangers of drug abuse in the workplace;
  - b. CONTRACTOR's policy of maintaining a drug-free workplace;
  - c. Any available counseling, rehabilitation and employee assistance programs; and
  - d. Penalties that may be imposed upon employees for drug abuse violations.
  
3. Provide, as required by Government Code § 8355(a)(3), that every employee who works on this Agreement:
  - a. Will receive a copy of CONTRACTOR's drug-free policy statement; and
  - b. Will agree to abide by the terms of CONTRACTOR's statement as a condition of employment.
  
4. Failure to comply with these requirements may result in suspension of payments under this Agreement or termination of this Agreement or both, and CONTRACTOR may be ineligible for award of future agreements if CITY determines that any of the following has occurred:
  - a. False certification; or
  - b. Violation of the certification by failing to carry out the requirements as noted above.

**E. Environmental Compliance.**

CONTRACTOR shall comply with all applicable standards, orders, and requirements relating to energy efficiency contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871), Section 306 of the Clean Air Act (42 U.S.C. § 7606), Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency Regulations (40 C.F.R. Part 31).

**F. Federal Ownership of Materials/Copyrights.**

The federal government reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal government purposes: (1) the copyright in any work developed under this AGREEMENT; and (2) any rights of copyright to which CONTRACTOR purchases ownership with grant funds received under this AGREEMENT. Further, the federal, State, and CITY governments shall have access to any report, preliminary findings or data assembled by CONTRACTOR under this AGREEMENT and the federal government shall retain ownership and patent rights to any discovery or invention under this AGREEMENT, as provided in 29 C.F.R. Section 95.48, Appendix A-5, 29 C.F.R. Section 97.34, and 29 C.F.R. Section 97.36(i)(8)-(9).

**G. Buy American.**

CONTRACTOR agrees that in expending the COMPENSATION AMOUNT it will comply with the Buy American Act (41 U.S.C. §§ 8301 et seq.).

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**H. Salary and Bonus Limitations.**

In compliance with Public Law 109-234, none of the funds appropriated in Public Law 109-149 or prior Acts under the heading "Employment and Training" that are available for expenditure on or after June 15, 2006, shall be used by a recipient or sub recipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II, except as provided for under section 101 of Public Law 109-149. This limitation shall not apply to CONTRACTORS providing goods and services as defined in OMB Circular A-133. Where states are recipients of such funds, states may establish a lower limit for salaries and bonuses of those receiving salaries and bonuses from sub recipients of such funds, taking into account factors including the relative cost-of-living in the states and the compensation levels for programs involved including Employment and Training Administration programs. See Training and Employment Guidance Letter number 5-06 for further clarification.

The incurrence of costs and receiving reimbursement for these costs under this award certifies that your organization has read the above special condition and is in compliance.

**I. Financial Provisions.**

**1. Allowable Expenses.**

CITY shall not be obligated under this AGREEMENT to reimburse CONTRACTOR for any expense that is not allowable. Allowable shall mean that the expense is: a) actually incurred by CONTRACTOR; b) reasonable and necessary for the purpose of providing services; c) permitted in the budget; and d) authorized and permitted under federal, State and local laws and regulations.

**2. Financial System.**

CONTRACTOR shall establish and maintain a system of financial record keeping which complies with applicable laws, rules and regulations, and with generally accepted accounting principles relevant to entities receiving federal funds.

CONTRACTOR shall maintain financial records adequate to show that funds paid under the AGREEMENT were used for purposes consistent with the terms of the AGREEMENT.

**3. Interest Income.**

Interest earned by CONTRACTOR on funds received under this AGREEMENT shall be Program Income ("Program Income"). No part of the funds received shall be commingled with other funds or used to support other programs.

**4. Program Income.**

CONTRACTOR shall use all Program Income to support case management and related services, and shall separately account for it in compliance with the 29 C.F.R. Section 95.24 (Nongovernmental CONTRACTORS) and 29 C.F.R. Section 97.25 (Governmental CONTRACTORS). 20 C.F.R. Section 667.200(a)(5) requires the addition method to be used for Program Income earned under federal grants. Any Program Income not used and accounted for shall be returned to the CITY upon termination of this AGREEMENT.

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**5. Adequate Financial Resources.**

CONTRACTOR shall have available non-federal resources, and resources other than those received from the CITY, readily convertible to cash in an amount to repay CITY all disallowed costs incurred in connection with this AGREEMENT, which resources shall be accessible to CITY during the entire retention period, and for one (1) year thereafter.

**Federal Fund Provisions**

CONTRACTOR is referred to under this provision as "Contractor".

In addition to all the other terms and conditions of this AGREEMENT, Contractor agrees to comply with the following FEMA provisions in performing the AGREEMENT. If any of these FEMA provisions conflict with any other provisions of this AGREEMENT, the FEMA provisions will take precedence unless the other provision is more restrictive, in which case the other provision will control as required under Section 12 above.

**A. Federal Equal Employment Opportunity (41 C.F.R. Section 60-1.4(b))**

In addition to the other nondiscrimination provisions in this AGREEMENT, Contractor will comply with the following:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
3. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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4. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this AGREEMENT or with any of the said rules, regulations, or orders, this AGREEMENT may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**B. Copeland "Anti-Kickback"**

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

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The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

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

**C. Contractor Work Hours and Safety Standards Act.**

If the amount of this AGREEMENT exceeds \$100,000, Contractor will comply with the following in addition to any other labor requirements in the AGREEMENT:

1. **Overtime requirements.** No contractor or subcontractor contracting for any part of the AGREEMENT work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
3. **Withholding for unpaid wages and liquidated damages.** The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

**CITY OF SAN JOSE  
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4. **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

**D. Federal Clean Air Act Requirements**

If the amount of this AGREEMENT exceeds \$150,000, Contractor will comply with the following:

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq.*
2. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the State of California, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

**E. Federal Water Pollution Act Requirements**

If the amount of this AGREEMENT exceeds \$150,000, Contractor will comply with the following:

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, *et seq.*).
2. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the State of California, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

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**F. Energy Efficiency/Conservation (44 C.F.R. § 13.36(i)(13))**

Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

**G. Suspension and Debarment**

Contractor will comply with the following provision:

1. This AGREEMENT is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
2. The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
3. This certification is a material representation of fact relied upon by the City. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City and the State of California, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
4. The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer.



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The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Contractor certifies that it is not listed as debarred, suspended, or otherwise excluded by agencies on the governmentwide exclusions in the System for Award Management ([www.sam.gov](http://www.sam.gov)).

<i>x Julian Roberts</i> _____ jroberts@foundationccc.org (7/19/2021) Email jroberts@foundationccc.org	<i>x Joseph Quintana</i> _____ jquintana@foundationccc.org (7/19/2021) Email jquintana@foundationccc.org
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Signature of Contractor's Authorized Official

\_\_ Julian Roberts Chief Financial Officer  
Joseph Quintana Vice President \_\_  
Name and Title of Contractor's Authorized Official

**H. Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352 (as amended))**

A Contractor who applies or bids for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the City.

**I. Use of Recovered/Recycled Materials**

In the performance of this AGREEMENT, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

1. Competitively within a timeframe providing for compliance with the Agreement performance schedule;
2. Meeting AGREEMENT performance requirements; or
3. At a reasonable price.

Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

**J. Subcontracting**

**CITY OF SAN JOSE  
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In addition to all other subcontracting provisions, Contractor shall comply with the following:

1. **Subcontractor Compliance:** The Contractor shall place in any subcontractor agreement the requirement that the subcontractor and all lower tier subcontractors comply with all the terms and conditions of this Agreement, including the FEMA requirements.
  
2. **Small and Minority Businesses, Women-Owned Businesses, and Labor Surplus Area Firms:** If the Contractor is authorized by this Agreement to use subcontractors, the Contractor warrants that it took the following affirmative steps, and that it has retained documentation of these steps:
  - Made reasonable efforts to identify (including using outside entities that specialize in this area) and place qualified small, minority, and women-owned business on subcontractor solicitation list(s) for this AGREEMENT;
  - Made reasonable efforts to solicit the businesses on the list as subcontractors for this AGREEMENT;
  - Divided the scope of work to be subcontracted, when economically feasible, into smaller tasks or quantities to permit maximum participation by qualified small, minority, and women-owned business; and
  - Made reasonable efforts to establish delivery schedules for subcontracted work, where requirements permit and it is otherwise appropriate, which encourage qualified small, minority, and women-owned business to respond subcontractor solicitations; and

If at any time during the term of the AGREEMENT the Contractor seeks and obtains authorization to use subcontractors to complete any of the scope of work, the Contractor shall take the affirmative steps listed above when selecting the subcontractor and will maintain documentation of all such efforts.

**K. Notice of FEMA Reporting Requirements and Regulations**

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

1. **General.** The City is using Public Assistance grant funding awarded by FEMA to the State of California to pay, in whole or in part, for the costs incurred under this Agreement. As a condition of Public Assistance funding under (major disaster or emergency) declaration, FEMA requires

**CITY OF SAN JOSE  
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the State of California to provide various financial and performance reporting.

- a. It is important that the Contractor is aware of these reporting requirements, as the City may require the Contractor to provide certain information, documentation, and other reporting in order to satisfy reporting requirements to the State of California which, in turn, will enable the State of California to satisfy reporting requirements to FEMA.
- b. Failure of State of California to satisfy reporting requirements to FEMA is a material breach of the FEMA-State Agreement, and could result in loss of Federal financial assistance awarded to fund this Agreement.

**2. Applicable Regulations and Policy.** The applicable regulations, FEMA policy, and other sources setting forth these reporting requirements are as follows:

- a. 44 C.F.R. § 13.40 (Monitoring and Reporting Program Performance)
- b. 44 C.F.R. § 13.41 (Financial Reporting)
- c. 44 C.F.R § 13.50(b) (Reports)
- d. 44 C.F.R. § 206.204(f) (Progress Reports)
- e. FEMA Standard Operating Procedure No. 9570.14, *Public Assistance Program Management and Grant Closeout Standard Operating Procedure* (Dec. 2013, as may be amended)
- f. FEMA-State Agreement

**3. Financial Reporting.** The State of California is required to submit the following financial reports to FEMA:

- a. **Initial Report.** An initial Federal Financial Report (SF 425) no later than 30 days after FEMA has approved the first Public Assistance project.
- b. **Quarterly Reports.** Following submission of the initial report, quarterly Federal Financial Reports until submission of the final report described in the following subparagraph. Reports are due on January 30, April 30, July 30, and October 30.
- c. **Final Report.** A final Federal Financial Report within 90 days of the end of the period of performance for the Public Assistance grant.

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- 4. Performance Reporting.** The State of California is required to submit the following financial reports to FEMA:
- a. **Initial Report.** An initial performance report no later than 30 days after FEMA has approved the first Public Assistance project.
  - b. **Quarterly Reports.** Following submission of the initial report, quarterly performance reports until submission of the final report described in the following subparagraph. Reports are due on January 30, April 30, July 30, and October 30.
  - c. **Final Report.** A final performance report within 90 days of the end of the period of performance for the Public Assistance grant.

**L. Access to Records (44 C.F.R. § 13.36(i)(10))**

In addition to all other provisions regarding records in this Agreement, Contractor agrees to comply with the following:

- 1. The Contractor agrees to provide the City, the State of California, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
- 2. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- 3. The Contractor agrees to provide the FEMA Administrator or his/her authorized representatives access to construction or other work sites pertaining to the work being completed under the AGREEMENT.
- 4. In compliance with the Disaster Recovery Act of 2018, the Contractor acknowledges and agrees that no language in this Agreement is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

**M. Retention of Records (44 C.F.R. § 13.36(i)(11))**

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

The Contractor agrees to maintain all books, records, accounts and reports required under this AGREEMENT for a period of not less than 3 years after the date of termination or expiration of this AGREEMENT, except in the event of litigation or settlement of claims arising from the performance of this AGREEMENT, in which case Contractor agrees to maintain same until the City,

**CITY OF SAN JOSE  
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State of California, the FEMA Administrator, the Comptroller General of the United States, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related to the litigation or settlement of claims.

**N. DHS Seal, Logo, and Flags**

The Contractor shall not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likeness of DHS agency officials without specific FEMA pre-approval.

**O. No Obligation by Federal Government**

The Federal Government is not a party to this AGREEMENT and is not subject to any obligations or liabilities to the City, Contractor, or any other party pertaining to any matter resulting from the Agreement.

**P. Compliance with Law**

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

**Q. Termination and Remedies**

1. **For Convenience:** The City may terminate this AGREEMENT at any time and for any reason by giving the Contractor 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.
2. **For Cause:** The City may terminate this AGREEMENT immediately upon written notice for any material breach by the Contractor. If the City terminates the AGREEMENT for cause and obtains the same services from another contractor at a greater cost, the Contractor is responsible for such excess cost in addition to any other remedies available to the City.
3. **Delivery of Work:** If the City terminates the AGREEMENT – whether for convenience or for cause – the City has the option of requiring the Contractor to provide to the City any finished or unfinished work product prepared by the Contractor up to the date of Contractor's receipt of the written notice of termination.
4. **Compensation:** The City will pay the Contractor the reasonable value of services satisfactorily rendered by the Contractor to the City up to the date of Contractor's receipt of the written notice of termination. For services to be "satisfactorily rendered," the City must determine that the Contractor provided them in accordance with the terms and conditions of this Agreement. The City will determine the reasonable value of satisfactorily rendered services based on the compensation agreed to by the Parties

**CITY OF SAN JOSE  
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attached to this AGREEMENT.

5. **Receipt of Notice**: For purposes of this provision, the Contractor's receipt of the written notice of termination will be determined based on the method of providing notice. The notice is effective: if e-mailed when sent provided the sender receives an acknowledgement from the intended recipient (e.g. return receipt, return e-mail, or other written acknowledgement); when personally delivered if personal service; and 3 calendar days after deposit in the United States mail, whichever occurs first.

**R. Fraud and False or Fraudulent or Related Acts**

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this AGREEMENT.

**CITY OF SAN JOSE  
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**Attachment 1  
Certification Regarding Lobbying**

**CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE  
AGREEMENTS**

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file

**CITY OF SAN JOSE  
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the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, Foundation for California Community Colleges, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

*x Julian Roberts*                      *x Joseph Quintana*  
jroberts@foundationccc.org (7/19/2021)      jquintana@foundationccc.org (7/19/2021)  
Email jroberts@foundationccc.org      Email jquintana@foundationccc.org

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Signature of Contractor's Authorized Official

Julian Roberts Chief Financial Officer  
Joseph Quintana Vice President \_\_\_\_\_  
Name and Title of Contractor's Authorized Official



**CITY OF SAN JOSE  
AGREEMENT**

**EXHIBIT F**

**Exhibit F is not applicable to this AGREEMENT.**

**CITY OF SAN JOSE  
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**EXHIBIT G**

**INSURANCE**

CONTRACTOR, at CONTRACTOR's sole cost and expense, shall procure and maintain for the duration of this Agreement the following insurance coverage against claims for injuries to persons or damages to property which may arise from or in connection with the CONTRACTOR's performances of the services hereunder by CONTRACTOR, 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 CG 0001) including premises operations, products and completed operations, contractual liability, Fire Legal Liability; and
2. The coverage provided by Insurance Services Office form number CA 0001 covering Automobile Liability. Coverage shall include all owned, non-owned and hired automobiles; and
3. Workers' Compensation Insurance as required by the State of California and Employer's Liability insurance; and
4. Property insurance against all risks of loss to any contents, tenant improvements or betterments including Business Interruption; and
5. Combination Crime Policy.

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**

CONTRACTOR 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 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 Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident; and
4. Professional Liability Errors & Omissions \$1,000,000 per claim/aggregate limit, coverage to be maintained following completion of work on project for 3 years or if policy is canceled, extended reporting period to equal the same.

**C. Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved by CITY's Risk Manager. At the option of CITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers;

**CITY OF SAN JOSE  
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or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by CITY's Risk Manager.

**D. Other Insurance Provisions**

1. The General Liability policy is to contain, or be endorsed to contain, the following provisions:
  - a. The City of San Jose, its officers, officials, employees, agents and volunteers are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of CONTRACTOR; products and completed operations of CONTRACTOR; premises owned, leased, operated or used by CONTRACTOR; and automobiles owned, leased, hired or borrowed by CONTRACTOR. The coverage shall contain no special limitation on the scope of protection afforded to the CITY, its officers, officials, employees, agents and volunteers.
  - b. CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by CITY, its officers, officials, employees, agents or volunteers shall be excess of CONTRACTOR's insurance and shall not contribute with it.
  - c. Any failure to comply with reporting or other provisions of the policies by CONTRACTOR shall not affect coverage provided CITY, its officers, officials, employees, agents or volunteers.
  - d. Coverage shall state that CONTRACTOR'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 Jose, its officers, employees, agents and CONTRACTORS.
2. Workers' Compensation and Employers' Liability
  - a. Coverage shall contain waiver of subrogation in favor of the City of San Jose, its officers, employees, agents and contractors
3. All Coverages
  - a. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or 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**

CONTRACTOR shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each

**CITY OF SAN JOSE  
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insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

City of San Jose – Finance  
Risk Management  
200 E. Santa Clara Street, 14th Floor - Tower  
San Jose, CA 95113-1905

**G. SubCONTRACTORS, Contractors, and Consultants**

CONTRACTOR shall include all consultants, contractors or subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each.

**H. Review of Coverage**

These insurance requirements shall be subject to review by CITY's Risk Manager. Should the Risk Manager require any change in coverage, any such change shall be noticed in writing by CITY to CONTRACTOR and CONTRACTOR shall comply with the change within thirty (30) days of the date of receipt of the notice.

**CITY OF SAN JOSE  
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**EXHIBIT H  
EXEMPLAR WORKSITE AGREEMENT**

**WORK SITE AGREEMENT**

Between

CITY OF SAN JOSE

And

[INSERT WORK SITE NAME]

The Agreement below describes the roles and responsibilities of both CITY OF SAN JOSE herein after CUSTOMER and [WORK SITE] herein after WORK SITE, in relation to the placement of Career Catalyst Program PARTICIPANTS (“PARTICIPANTS”) placed at WORK SITE. PARTICIPANTS are employees of the Foundation for California Community Colleges (“FOUNDATION”). FOUNDATION will act as employer of record for the PARTICIPANT and provide all payrolls and associated costs (i.e., workers' compensation, taxes, etc.). The FOUNDATION provides workers’ compensation coverage for PARTICIPANTS.

**1. WORK SITE Responsibilities**

- 1.1 WORK SITE agrees to provide one or more CAREER CATALYST/SAN JOSE WORKS PARTICIPANTS (hereafter called “PARTICIPANT”) with the opportunity to work in jobs at WORK SITE, which will enhance long term employability skills through work exposure (career exploration) and to gain entry level work readiness skills (work maturity) for future employment opportunities. WORK SITE shall train the PARTICIPANT in work maturity skills and work readiness skills and in accordance with the agreed upon workplace competencies (See Attachment A, attached hereto and incorporated by reference, for Training Outline).
- 1.2 WORK SITE shall have the responsibility for the day-to-day control and supervision of PARTICIPANTS and must provide PARTICIPANT with supervision, training, and work assignments in accordance with the job description.
- 1.3 WORK SITE shall allow for monitoring visits by representatives of the FOUNDATION and CUSTOMER.
- 1.4 WORK SITE shall notify CUSTOMER and FOUNDATION if any position is subject to any state, federal or local minimum or prevailing wage requirements, or subject to the terms of a collective bargaining agreement prior to PARTICIPANT on-boarding.

**CITY OF SAN JOSE  
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- 1.5 WORK SITE shall not entrust PARTICIPANTS with the care of unattended premises, or unsupervised custody or control of cash, credit cards, valuables, or other similar property without the prior written approval of the FOUNDATION.
- 1.6 WORK SITE shall ensure PARTICIPANTS receive meal and rest breaks in compliance with both California Law and the FOUNDATION's Policy and Procedures manual. WORK SITE agrees to accurately track and provide to CUSTOMER and FOUNDATION a time record for all hours worked by each PARTICIPANT on a bi-weekly basis. The time record shall include all of the PARTICIPANT's start and end times, as well as meal period and rest breaks. WORK SITE will be responsible for ensuring PARTICIPANT's enter and approve accurate timesheets. Billed rates will be increased to reflect overtime hours worked and meal period premiums according to state or local law.
- 1.7 WORK SITE shall provide the PARTICIPANT with supervision, safety instructions and safety related equipment that is required and/or is reasonable to protect against injury and/or illness while working at the WORK SITE. Where special clothing or equipment is provided to the WORK SITE's employees, the same shall be provided to the PARTICIPANT.
- 1.8 WORK SITE shall ensure that the PARTICIPANT is exposed to all the customary practices of the WORK SITE and the normal requirements of the job, including the WORK SITE's personnel practices and policies.
- 1.9 The WORK SITE shall maintain the confidentiality of any information regarding the PARTICIPANT or his/her immediate family, which may be obtained through application forms, interviews, reports, or any other source.
- 1.10 WORK SITE shall immediately notify CUSTOMER and FOUNDATION if a case of COVID-19 is detected at the WORK SITE, which includes but is not limited to an instance where a PARTICIPANT or WORK SITE staff tests positive for COVID-19, or a third-party that closely interacts with PARTICIPANT or WORK SITE staff tests positive for COVID-19.

**2. CUSTOMER Responsibilities**

- 2.1 CUSTOMER will visit the WORK SITE intermittently, but at least on a monthly basis for the purpose of monitoring this agreement and reviewing PARTICIPANT progress.
- 2.2 CUSTOMER will submit time sheets electronically if possible; otherwise, CUSTOMER will visit the WORK SITE to collect timesheets and submit for payroll processing or submit electronically as a preferred process.
- 2.3 CUSTOMER will provide case management services for the PARTICIPANTS, including managing all employment paperwork and on-boarding of PARTICIPANT.

**CITY OF SAN JOSE  
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**3. Compliance with Federal, State, and Local Laws**

- 3.1 PARTICIPANTS must complete all legally required documentation and provide valid documentation to CUSTOMER prior to beginning paid work experience at the WORK SITE.
- 3.2 WORK SITE shall ensure that PARTICIPANTS who are under the age of 18 do not exceed 8 hours per day or 40 hours per week. If PARTICIPANTS over the age of 18 do exceed 8 hours per day or 40 hours per week, WORK SITE will be responsible for payment of overtime to the PARTICIPANT. WORK SITE will ensure that no PARTICIPANT exceeds the total program allowed number of total hours. This number cannot exceed 1000 hours per PARTICIPANT per year unless classified as a Student Assistant with CUSTOMER and FOUNDATION approval.
- 3.3 WORK SITE certifies that it provides a drug-free workplace, required by the California Drug-Free Workplace Act of 1990 (Government Code section 8350 et seq.).
- 3.3 WORK SITE shall comply with all applicable federal, state and local laws and regulations to a safe and accessible work environment, including but not limited to, federal and state Occupational Safety and Health Administration (“OSHA”) laws and regulations, including the recording of workplace injuries on CUSTOMER’s OSHA 300 logs. WORK SITE agrees to provide PARTICIPANTS with new-hire safety orientation and regular safety training and meetings in accordance with Cal-OSHA for the WORK SITE’s industry.
- 3.4 WORK SITE shall comply with the requirements of the Fair Labor Standards Act, the California Labor Code, the California Industrial Wage Orders, Title VII of the Civil Rights Act of 1964, the Fair Employment and Housing Act, the Hatch Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, Workforce Innovation and Opportunity Act (“WIOA”), and all other federal, state, and local laws and regulations governing the hiring or employment of PARTICIPANT.
  - 3.4.1 If the regulations promulgated pursuant to WIOA are amended or revised, it shall comply with them or will notify CUSTOMER within 30 days after promulgation of the amendments or revision that it cannot so conform.
- 3.5 WORK SITE shall ensure that PARTICIPANTS under the age of 21 will not have access to, distribute, sell, serve, or come in contact with alcohol or tobacco products. For those individuals over age 21, the WORK SITE shall ensure the individual receives proper training for selling, pouring, distributing alcohol and tobacco products. Violation of this policy will result in termination of the WORK SITE agreement.

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- 3.6 WORK SITE shall not participate in the Career Catalyst program if experiencing abnormal labor conditions such as strikes, lockouts, or layoffs and the work experience PARTICIPANT will dislocate or affect employment or promotional opportunities for the WORK SITE's current or laid-off employees.
- 3.7 WORK SITE and/or the PARTICIPANT shall not be involved in training activities, which assist, promote, or deter union organization.
- 3.8 PARTICIPANT shall not be employed on the construction, operation, or maintenance of any facility as is used or to be used for sectarian instruction, or as a place for religious worship.
- 3.9 WORK SITE management shall inform CUSTOMER immediately if they become aware that there is an employee or other person at the WORK SITE that PARTICIPANT may come into contact with that is listed as a Registered Sex Offender.
- 3.10 WORK SITE and CUSTOMER agree to the retention of all required records, as per 29 CFR 95.53, for no less than 3 years following the completion of this agreement.
- 3.11 WORK SITE shall comply with all applicable federal, state, and local orders, advisories, and guidelines on COVID-19 related workplace restrictions and notification obligations, including but not limited to those from the Center for Disease Control and Prevention (CDC), the California Department of Public Health (CDPH), local county, or any other applicable government entity.

**4. Term, Termination, Waiver, and Modification**

- 2.4 The period of this Agreement is from date of execution– April 30, 2021 (“Term”).
- 2.5 CUSTOMER may, in its sole discretion, terminate this Agreement at any time, for any reason, without penalty, and require the removal of the PARTICIPANT from the WORK SITE if determined to be in the PARTICIPANT’s or CUSTOMER’s best interest. The WORK SITE may terminate this Agreement for any reason, without penalty, upon 15 days written notice to CUSTOMER.
- 2.6 No modification or waiver of any provisions of this Agreement or its attachments shall be effective unless such waiver or modification shall be in writing, signed by all parties, and then shall be effective only for the period and on the condition, and for the specific instance for which given

**5. Worker’s Compensation and Employment Claims**

- 2.7 WORK SITE shall immediately notify CUSTOMER and FOUNDATION of any injury and/or Workers’ Compensation Claims related to a PARTICIPANT.



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- 2.8 WORK SITE shall promptly report to CUSTOMER and FOUNDATION any claims of harassment, discrimination, and/or claims of any violation of law governing the PARTICIPANT's employment, including allegations or reports of any irregularities or discrepancies by PARTICIPANT.
- 2.9 WORK SITE must secure CUSTOMER and FOUNDATION's written approval prior to PARTICIPANT's use of motor vehicles or heavy equipment. CUSTOMER must also be in compliance with FOUNDATION's driving policy in the event that a PARTICIPANT uses such motor vehicles or heavy equipment during the course of the program.

**6. Insurance and Indemnification**

6.1 WORK SITE shall maintain insurance as listed below:

- i. Comprehensive commercial general liability, property loss, and personal injury insurance with a combined single limit of no less than one million dollars (\$1,000,000.00) per occurrence; The Commercial General Liability Policy shall name City of San Jose and Foundation for California Community Colleges, their directors, officers, and employees as Additional Insureds.

Certificate holders will be:

City of San Jose – Finance  
Risk Management  
200 E. Santa Clara Street, 14th Floor - Tower  
San Jose, CA 95113-1905

Foundation for California Community Colleges  
1102 Q Street, Suite 4800  
Sacramento, CA 95811

- ii. Workers' compensation as required under the Workers' Compensation and Safety Act of the State of California, as amended from time to time for WORK SITE's employees only (not PARTICIPANTS).

6.2 The WORK SITE shall indemnify and hold harmless CUSTOMER and Foundation for California Community Colleges, its elected and appointed councils, boards, commissions, officers, agents, and employees from any liability, including attorneys' fees, for damage or claims for damage for any economic loss or personal injury, including death, as well as for property damage, to the extent caused by intentional or negligent acts or omissions the performance of services rendered under this Agreement.

6.3 WORK SITE shall be liable for and shall indemnify, defend and hold both CUSTOMER and Foundation for California Community Colleges harmless against any costs, expenses, claims,

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suits, judgments, loss or damage (including reasonable attorneys' fees) arising from any and all wage and hour violations or breach of any labor and employment laws due to the fault, willful misconduct, or negligence of the WORK SITE.

**7. Notices**

7.1 All notices and other communications required or permitted to be given under this agreement, including but not limited to any notice of change of address, must be directed to the following individuals:

CUSTOMER:

MONIQUE MELCHOR  
5730 Chambertin Drive  
San Jose, CA 95118  
408-794-1108  
Monique.melchor@sanjoseca.gov

WORK SITE:

[INSERT INFORMATION]

FOUNDATION

Workforce Development  
Foundation for California Community Colleges  
1102 Q Street, Suite 4800  
Sacramento, CA 95811  
916-498-6723  
careercatalyst@foundationccc.org

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The parties each represent and warrant that the signatories below are authorized to sign this agreement on behalf of themselves or the party on whose behalf they execute this agreement.

THE PARTIES HEREBY EXECUTE THIS AGREEMENT with their signature below.

**CUSTOMER**

**WORK SITE**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: Leland Wilcox

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

Title: Chief of Staff, Office of the City  
Manager

Title: \_\_\_\_\_

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

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

**FORM OF AGREEMENT APPROVED BY  
THE OFFICE OF THE CITY ATTORNEY**

**WORK SITE**

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

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

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**ATTACHMENT A to Job Site Agreement**

**TRAINING OUTLINE:**

**Please complete a copy of this ATTACHMENT for each different position.**

Job Site Name: [ ]

Total Weeks / Hours: [ ]

Total hours authorized per week: [ ]

Hourly compensation: \$[ ]

Job Site contact person & phone number: [ ]

Scheduled date of completion: [ ]

# of participants requested for this position: [ ]

**SPECIFICS SKILLS TRAINING OUTLINE: (N/A to this Agreement)**

**CORE SKILL COMPETENCIES/INDICATORS: (N/A to this Agreement)**











**JOB TITLE AND DETAILED DESCRIPTION:**

[ ]

# FCCC resiliencecorps\_FINAL

Created: **07/19/2021**  
Status: Signed  
Transaction ID: 5c135c44-5646-47bd-87ac-e74f14e77f6a

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-  Miguel Bernal created the document.  
07/19/2021 5:31:37 PM GMT
-  Document was emailed to jroberts@foundationccc.org  
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-  Document was emailed to Sarah Zarate  
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-  Sarah Zarate signed the document.  
07/23/2021 5:43:05 PM GMT - [REDACTED]
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