

# Standard City of San José Consultant Agreement

(Non-Capital Projects)

This Agreement is between the City of San José, a municipal corporation ("City"), and San Jose Evergreen Community College District, acting through Center for Economic Mobility a California Community College District ("Consultant").

This Agreement is made and entered into this 21st day of November 2021 ("Contract Date").

THE CITY AND CONSULTANT AGREE AS FOLLOWS:

## 1. AGREEMENT SCOPE

- 1.1 General:** This Agreement sets forth the terms and conditions under which the Consultant will provide professional consulting services to the City.
- 1.2 Exhibits:** This Agreement consists of this agreement form and the following exhibits, which are incorporated herein by reference:
- Exhibit A:** Scope of Basic Services
  - Exhibit B:** Compensation
  - Exhibit C:** Insurance Requirements
  - Exhibit D:** General WIOA Provisions
  - Cert. 1.1** Debarment and Suspension Certification
  - Cert. 1.2** Lobbying Certification
- 1.3 Director:** "Director" means the Director of work2future or the Director's designee.
- 1.4 Business Days:** "Business Day" and "Business Days" means the day(s) on which City Hall is open to conduct business.
- 1.5 Entire Agreement:** This Agreement is the final, complete and exclusive understanding of the parties as to the matters contained herein. It supersedes all prior communications and understandings regarding such matters.
- 1.6 Amendments:** This Agreement may be modified only by a written amendment executed by the parties.

## 2. AGREEMENT TERM

The Agreement term is from the Contract Date to June 30, 2022, inclusive, unless terminated earlier pursuant to Section 19 below.

### 3. SCOPE OF SERVICES

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

### 4. INTENTIONALLY OMITTED

### 5. CITY’S CONTRACT MANAGER

The City’s contract manager for this Agreement is:

Name: Colleen Brennan	Phone No.: 408 794-1139
Department: Office of Economic Development – work2future	E-mail: colleen.brennan@sanjoseca.gov
Address: 5730 Chambertin Dr. San Jose, CA 95118	

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

### 6. CONSULTANT’S STAFFING

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

<u>Consultant's Contract Manager</u>		<u>Required to File Form 700?</u>		
		Yes Already Filed (Insert Date Filed)	Yes Need to File	No
Name: Alexandra Duran	Phone No.: (408) 918-5109			<u>X</u>
Address: 40 South Market Street San Jose, CA 95113	E-mail: alexandra.duran@sjeccd.edu			
<u>Other Staffing</u>				
<u>Name:</u>	<u>Assignment:</u>			
1.				
2.				
3.				

**6.2 Contract Manager's Authority:** The Consultant's contract manager is authorized to act on behalf of the Consultant.

**6.3 Staffing Changes:** The Director's prior written approval is required for the Consultant to remove, replace or add to any of its staffing identified in this provision.

## 7. USE OF SUBCONSULTANTS

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

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

Subconsultant's Name	Area of Work
1.	

2.	
3.	

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

## 8. INDEPENDENT CONTRACTOR

**8.1** **General:** The Consultant has complete control over its operations and employees, and is an independent contractor. The Consultant is not an agent or employee of the City, and shall not represent or act as the City's agent or employee. The Consultant does not have any rights to retirement benefits or other benefits accruing to City employees, and expressly waives any claim it may have to any such rights.

**8.2** **Subcontractors:** As an independent contractor, the Consultant has complete control over its subconsultants, subcontractors, suppliers, agents and any other person or entity with whom the Consultant contracts in furtherance of this Agreement (collectively "Subcontractors"). Subject to the requirements of Section 7 of this Agreement, the Consultant is solely responsible for selecting, managing and compensating its Subcontractors, and for ensuring they comply with this Agreement.

**8.3** **Indemnity:** The Consultant shall place in each Subcontractor agreement indemnity obligations in favor of the City in the exact form and substance of those contained in Section 11 below.

## 9. STANDARD OF PERFORMANCE

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

## 10. COMPENSATION

**10.1** **Maximum Total Compensation:** The maximum amount the City will pay the Consultant for all professional fees, costs, charges and expenses related to performing Basic Services and any Additional Services is \$30,000. ("Maximum Total Compensation").

**10.2** **Intentionally Omitted.**

**10.3** **Exhibit B - Compensation:** The City will pay the Consultant up to the Maximum Total Compensation in accordance with **Exhibit B**.

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

**10.3.2** **Schedule of Rates and Charges:** If the City will compensate the Consultant for any Basic Services on a time-and-materials basis, then **Exhibit B** also sets forth a schedule

of the Consultant's rates and charges ("Schedule of Rates and Charges"). The Schedule of Rates and Charges is subject to the following requirements:

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

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

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

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

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

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

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

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

**10.4.3.2 Invoices Based on Time and Materials:** If time and materials is the basis of compensation, then the Consultant will base its invoice on the hours, professional fees, costs, and charges associated with the work completed during the invoice period. If the Consultant is entitled to reimbursable expenses and/or separate payment for subconsultant costs, the invoice will include such expenses and/or costs associated with the work completed during the invoice period. The City will compensate the Consultant in accordance with the Schedule of Rates and Charges included in **Exhibit B**.

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

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

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

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

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

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

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

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

Reimbursable Expense Schedule		Mark Up
1.	The cost of mailing, shipping and/or delivery of any documents or materials.	No Markup
2.	The cost of photographing, printing, reproducing and/or copying any documents or materials.	No Markup
3.	Telephone and facsimile transmission charges.	No Markup
4.	The rental of any specialized equipment to the extent the City’s contract manager has preapproved, in writing, the cost of such rental.	As specified, not to exceed 10%

5.	With the written pre-authorization of the City’s contract manager, mileage and other travel-related expenses to the same extent that the City reimburses its employees pursuant to the Employee Travel Policy (City Policy Manual, Sections 1.8.2 and 1.8.3). The Consultant acknowledges that it has received a copy of Sections 1.8.2 and 1.8.3 and is familiar with these sections of the Employee Travel Policy.	No Markup
6.	Any other expenses expressly identified in <b>Exhibit B</b> as being reimbursable.	As specified, not to exceed 10%

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

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

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

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

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

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

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

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

## 11. INDEMNIFICATION

- 11.1 Obligation:** The Consultant shall defend, indemnify and hold harmless the City and its officers, employees and agents against all claims, losses, damages, injuries, expenses or liabilities that – directly or indirectly, or in whole or in part - arise out of, pertain to, or relate to any of the following:
- The Consultant’s negligent performance of all or any part of the Basic Services and any Additional Services; or
  - Any negligent act or omission, recklessness or willful misconduct of the Consultant, any of its Subcontractors, anyone directly or indirectly employed by either the Consultant or any of its Subcontractors, or anyone that they control; or
  - Any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person(s) caused by the City’s use of any services, deliverables or other items provided by the Consultant pursuant to the requirements of this Agreement; or
  - Any breach of this Agreement.
- 11.2 Limitation on Obligation:** The obligation in Subsection 11.1 above shall not apply to the extent that any claim, loss, damage, injury, expense or liability results from the sole negligence or willful misconduct of the City or its officers, employees or agents.
- 11.3 Duty to Defend:** The Consultant’s obligation in Subsection 11.1 above applies to the maximum extent allowed by law and includes defending the City, its officers, employees and agents as set forth in Sections 2778 and 2782.8 of the California Civil Code. Upon the City’s written request, the Consultant, at its own expense, shall defend any suit or action that is subject to the obligation in Subsection 11.1 above.
- 11.4 Insurance:** The City’s acceptance of any insurance in accordance with Section 12 does not relieve the Consultant from its obligations under this Section 11. The Consultant’s obligations under this Section 11 apply whether or not the insurance required by the Agreement covers any damages or claims for damages.
- 11.5 Survival:** The Consultant’s obligations under this Section 11 survive the expiration or earlier termination of the Agreement.

## 12. INSURANCE REQUIREMENTS

- 12.1 General:** The Consultant shall comply with the insurance requirements set forth in **Exhibit C** for the Agreement term.
- 12.2 Documentation:** Before performing any services, the Consultant must submit to the City’s designated risk manager ("Risk Manager"), for the Risk Manager’s written approval, all documents demonstrating compliance with the requirements of **Exhibit C**.
- 12.3 Changes:** The Risk Manager may amend or waive, in writing, any of the requirements contained in **Exhibit C**.

## 13. OWNERSHIP OF WORK PRODUCT



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

## 14. DISCLOSURE OF WORK PRODUCT

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

## 15. AUDIT/INSPECTION OF RECORDS

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

- 15.3** **State Auditor:** In accordance with Government Code Section 8546.7, the Consultant may be subject to audit by the California State Auditor with regard to the Consultant's performance of this Agreement if the compensation under this Agreement exceeds \$10,000.

## **16. NON-DISCRIMINATION/NON-PREFERENCE**

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

## **17. CONFLICT OF INTEREST**

- 17.1** **General:** The Consultant represents that it is familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Agreement. The Consultant certifies that, as of the Contract Date, it was unaware of any facts constituting a conflict of interest or creating an appearance of a conflict of interest. The Consultant shall avoid all conflicts of interest or appearances of conflicts of interest in performing this Agreement. The Consultant has the obligation of determining if the manner in which it performs any part of this Agreement results in a conflict of interest or an appearance of a conflict of interest, and shall immediately notify the City in writing if it becomes aware of any facts giving rise to a conflict of interest or the appearance of a conflict of interest.
- 17.2** **Filing Form 700:** In accordance with the California Political Reform Act (Government Code Section 81000 et seq.), the Consultant shall cause each person performing services under this Agreement, and identified as having to file a Form 700 to do each of the following:
- Disclose the categories of economic interests in Form 700 as required by the Director;
  - Complete and file the Form 700 no later than 30 calendar days after the person begins performing services under this Agreement and all subsequent Form 700s in conformance with the requirements specified in the California Political Reform Act; and
  - File the original Form 700 with the City's Clerk with a copy submitted to the Director.
- 17.3** **Future Services:** The Consultant acknowledges each of the following with regard to performing future services for the City:
- The Consultant's performance of the services required by this Agreement may create an actual or appearance of a conflict of interest with regard to the Consultant performing or participating in the performance of some related **future** services, particularly if the services required by this Agreement comprise one element or aspect of a multi-phase process or project;

- Such an actual or appearance of a conflict of interest would be a ground for the City to disqualify the Consultant from performing or participating in the performance of such future services; and
- The Consultant is solely responsible for considering what potential conflicts of interest, if any, performing the services required by this Agreement might have on its ability to obtain contracts to perform future services.

## 18. ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY

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

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

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

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

**18.3 Environmentally Preferable Procurement Policy:** The Environmentally Preferable Procurement Policy, along with a brief policy description, is located on the City’s website at the following link: <http://www.sanjoseca.gov/?nid=1774>. Environmental procurement policies and activities related to the completion of Consultant’s work will include, whenever practicable, but are not limited to:

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

## 19. TERMINATION

- 19.1 For Convenience:** The Director may terminate this Agreement at any time and for any reason by giving the Consultant written notice of the termination. The written notice must set forth the effective date of the termination, which must be at least 7 Business Days' after the date of the written notice.
- 19.2 For Cause:** The Director may terminate this Agreement immediately upon written notice for any material breach by the Consultant. If the Director terminates the Agreement for cause and obtains the same services from another consultant at a greater cost, the Consultant is responsible for such excess cost in addition to any other remedies available to the City.
- 19.3 Delivery of Work:** If the Director terminates the Agreement – whether for convenience or for cause – the Director has the option of requiring the Consultant to provide to the City any finished or unfinished Work Product prepared by the Consultant up to the date of Consultant's receipt of the written notice of termination.
- 19.4 Compensation:** The City will pay the Consultant the reasonable value of services satisfactorily rendered by the Consultant to the City up to the date of Consultant's receipt of the written notice of termination. For services to be "satisfactorily rendered," the Director must determine that the Consultant provided them in accordance with the terms and conditions of this Agreement. The Director will determine the reasonable value of satisfactorily rendered services based on the Compensation Table and any Schedule of Rates and Charges attached to this Agreement.
- 19.5 Receipt of Notice:** For purposes of this provision, the Consultant's receipt of the written notice of termination will be determined based on the date of actual receipt or based on Subsection 20.2 below, whichever occurs first.

## 20. NOTICES

- 20.1 Manner of Giving Notice:** All notices and other communications required by this Agreement must be in writing, and must be made via e-mail, personal service or United States mail, postage prepaid.
- 20.2 When Effective:** A notice or other communication that is e-mailed is effective when sent provided the sender receives an acknowledgement from the intended recipient (e.g. return receipt, return e-mail, or other written acknowledgement). A notice or other communication that is personally served is effective when personally delivered. A notice or other communication that is mailed is effective 3 calendar days after deposit in the United States mail.
- 20.3 To Whom Given:** All notices and other communications between the parties regarding the Agreement must be given to the individuals identified below using the appropriate contact information for giving notice:

To the City: City of San José  
Office of Economic Development  
work2future Division  
Attn: Monique Melchor  
5730 Chambertin Drive  
San Jose, CA 95118

To the Consultant: San Jose Evergreen Community College District, acting through  
Center for Economic Mobility  
Attn: Alexandra Duran  
40 South Market Street  
San Jose, CA 95113

- 20.4 Changing Contact Information:** Either party may change its contact information for receiving written notices and communications regarding the Agreement by providing notice of such change to the other party pursuant to this Section 20.

## 21. MISCELLANEOUS

- 21.1 Gifts Prohibited:** The Consultant represents that it is familiar with Chapter 12.08 of the San José Municipal Code, which generally prohibits a City officer or designated employee from accepting any gift. The Consultant shall not offer any City officer or designated employee any gift prohibited by Chapter 12.08. The Consultant's violation of this Subsection 21.1 is a material breach.
- 21.2 Disqualification of Former Employees:** The Consultant represents that it is familiar with Chapter 12.10 of the City's Municipal Code, which generally prohibits a former City officer and a former designated employee from providing services to the City connected with his/her former duties or official responsibilities. The Consultant shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10. The Consultant's violation of this Subsection 21.2 is a material breach.
- 21.3 Waiver of a Violation:** The City's waiver of any violation of this Agreement by the Consultant is not a waiver of any other violation by the Consultant.
- 21.4 Acceptance of Services Not a Waiver:** The City's acceptance of any service or deliverable is not a waiver or release of any professional duty of care applicable to such service or deliverable, or of any right of indemnification, any insurance requirements, or any other term or condition of this Agreement.
- 21.5 Compliance with Laws:** The Consultant shall perform all services consistent with all applicable federal, state and local laws, ordinances, codes and regulations. This obligation is not limited in any way by the Consultant's obligation to comply with any specific law, ordinance, code or regulation set forth elsewhere in this Agreement.
- 21.6 Business Tax:** The Consultant represents and warrants that it currently has a City business tax certificate or exemption, if qualified, and will maintain such certificate or exemption for the Agreement term.
- 21.7 Assignability:** Except to the extent this Agreement authorizes the Consultant to use subconsultants, the Consultant shall not assign any part of this Agreement without the Director's prior written consent. The Director, at the Director's discretion, may void this Agreement if a violation of this provision occurs.

- 21.8 Governing Law:** California law governs the construction and performance of this Agreement.
- 21.9 Disputes:** Any litigation resulting from this Agreement will be filed and resolved by a federal or state court in California.
- 21.10 Survival of Provisions:** If a court finds any part of this Agreement unenforceable, all other parts shall remain enforceable.
- 21.11 Headings:** The section and exhibit headings are for convenience only and are not to be used in its construction.

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

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

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

Or

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

**City of San José**

**Consultant**

**Sarah Zarate**

By Sarah Zarate  
Sarah Zarate (11/21/2021)  
Email: sarah.zarate@sanjoseca.gov

**Jorge Escobar**

By Jorge L. Escobar, VCAS  
jorge.escobar@sjeccd.edu (11/17/2021)  
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Sarah Zarate, Director

Jorge Escobar, Vice Chancellor, Administrative Services

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

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

**Approved as to Form:**

\_\_\_\_\_  
ARLENE SILVA  
Deputy City Attorney

Date





## EXHIBIT A: SCOPE OF BASIC SERVICES

(Non-Capital Projects)

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

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### General Description of Project:

- A. City is the recipient of a State of California Workforce Innovation and Opportunity Act Grant pursuant to the Workforce Innovation and Opportunity Act of 2014 ("WIOA") to serve WIOA-eligible clients within the San José Silicon Valley Workforce Development Area ("Local Area").
- B. The Local Area is comprised of the cities of San José, Gilroy, Campbell, Los Gatos, Saratoga, Morgan Hill, Monte Sereno, Los Altos Hills, and unincorporated areas of Santa Clara County.
- C. The San José Silicon Valley Workforce Investment Network ("SVWIN") has oversight over federal and state workforce development funds that are allotted to the Local Area pursuant to the WIOA.
- D. City, through the Office of Economic Development, is the fiscal agent for SVWIN. The Mayor of San José acts as Chief Local Elected Official for the Local Area.
- E. City's work2future Director ("Director"), including the Director's authorized designees, are charged with the administration of this Agreement.
- F. References to the Workforce Investment Act (WIA), and 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 in this Agreement include legislation which may replace WIOA, and all other applicable federal, state and local rules, regulations, laws, policies, guidelines, circulars, and field memoranda.

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### Task No. 1: Negotiate with existing and new State mandated partners.

- A. **Services:** CONSULTANT will facilitate negotiations with existing and new State mandated partners as requested by City if the State mandates additional partners or additional MOU (Memorandum Of Understanding) terms.
- B. **Deliverable:** Written report of negotiation terms agreed upon by partner(s) and CITY.
- C. **Completion Time:** The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:
  - On or before the following date: June 30, 2022.
  - On or before \_\_\_ Business Days from \_\_\_\_\_.

**Task No. 2:** Develop a customer satisfaction survey and analysis

- A. Services:** CONSULTANT will develop a CITY-approved, client-based, customer satisfaction survey. CONSULTANT will administer and conduct analysis of customer process flow elements to determine appropriate survey touch points. Consultant will compile results and provide recommendations to CITY based on the results.
- B. Deliverable:** Report of compiled survey results and analysis of customer process flow.
- C. Completion Time:** The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:
- On or before the following date: June 30, 2022.
- On or before \_\_\_ Business Days from \_\_\_\_\_.

**Task No. 3:** Strengthen Partnerships

- A. Services:** CONSULTANT will develop a partner engagement strategy and a method by which to measure actual partner engagement. If indicated by engagement measurement, revise engagement strategy. CONSULTANT will strengthen partner engagement and measure actual partner engagement.
- B. Deliverable:** Written report of partner engagement metrics.
- C. Completion Time:** The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:
- On or before the following date: June 30, 2022.
- On or before \_\_\_ Business Days from \_\_\_\_\_.

**Task No. 4:** General Knowledge Cross-training #1

- A. Services:** CONSULTANT will facilitate a minimum of four general knowledge cross-trainings between the mandated partners. CONSULTANT will facilitate a general cross-training between the mandated partners.
- B. Deliverable:** Completion of the first of four cross trainings.
- C. Completion Time:** The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:
- On or before the following date: September 30, 2021.
- On or before \_\_\_ Business Days from \_\_\_\_\_.

**Task No. 5: General Knowledge Cross-training #2**

- A. **Services:** CONSULTANT will facilitate a minimum of four general knowledge cross-trainings between the mandated partners. Facilitate a general cross-training between the mandated partners.
- B. **Deliverable:** Completion of the second of four cross trainings.
- C. **Completion Time:** The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:
  - On or before the following date: December 31, 2021.
  - On or before \_\_\_ Business Days from \_\_\_\_\_.

**Task No. 6: General Knowledge Cross-training #3**

- A. **Services:** CONSULTANT will facilitate a minimum of four general knowledge cross-trainings between the mandated partners. CONSULTANT will facilitate a general cross-training between the mandated partners.
- B. **Deliverable:** Completion of the third of four cross trainings.
- C. **Completion Time:** The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:
  - On or before the following date: March 31, 2022.
  - On or before \_\_\_ Business Days from \_\_\_\_\_.

**Task No. 7: General Knowledge Cross-training #4**

- A. **Services:** CONSULTANT will facilitate a minimum of four general knowledge cross-trainings between the mandated partners. Facilitate a general cross-training between the mandated partners.
- B. **Deliverable:** Completion of the fourth of four cross trainings.
- C. **Completion Time:** The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:
  - On or before the following date: June 30, 2022.
  - On or before \_\_\_ Business Days from \_\_\_\_\_.

**Task No. 8: Meeting Participation**

- A. **Services:** CONSULTANT will develop a plan to achieve a 100% meeting participation from the mandated partners. Plan will include phone calls to remind partners of meetings.
- B. **Deliverable:** Achieve 100% meeting participation from mandated partners. Sign-in-sheets from all meetings.
- C. **Completion Time:** The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:
  - On or before the following date: June 30, 2022.
  - On or before \_\_\_ Business Days from \_\_\_\_\_.

**Task No. 9: Facilitate quarterly partner meetings**

- A. **Services:** CONSULTANT will convene and facilitate at least four meetings per year among partners and WIOA- funded service providers to share best practices and foster collaboration. CONSULTANT will convene and facilitate a partner meeting in quarter 1.
- B. **Deliverable:** Completion of quarter 1 partner meeting.
- C. **Completion Time:** The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:
  - On or before the following date: September 30, 2021.
  - On or before \_\_\_ Business Days from \_\_\_\_\_.

**Task No. 10: Quarter 1 partner meeting reports**

- A. **Services:** CONSULTANT will create a report containing the meeting notes or minutes and any pertinent outcomes of the meeting shall be submitted via email to the Project Manager within ten days of each meeting.
- B. **Deliverable:** CONSULTANT will submit a report containing meeting notes or minutes and any pertinent outcomes of the meeting to the Project Manager.
- C. **Completion Time:** The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:
  - On or before the following date: \_\_\_\_\_.
  - On or before \_\_10\_\_ Business Days from Quarter 1 partner meet.

**Task No. 11:** Facilitate quarterly partner meetings

- A. Services:** CONSULTANT will convene and facilitate at least four meetings per year among partners and WIOA- funded service providers to share best practices and foster collaboration. CONSULTANT will convene and facilitate a partner meeting in quarter 2.
- B. Deliverable:** Completion of quarter 2 partner meeting.
- C. Completion Time:** The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:
  - On or before the following date: December 31, 2021.
  - On or before      Business Days from \_\_\_\_\_.

**Task No. 12:** Quarter 2 partner meeting reports

- A. Services:** CONSULTANT will create a report containing the meeting notes or minutes and any pertinent outcomes of the meeting shall be submitted via email to the Project Manager within ten days of each meeting.
- B. Deliverable:** CONSULTANT will submit a report containing meeting notes or minutes and any pertinent outcomes of the meeting to the Project Manager.
- C. Completion Time:** The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:
  - On or before the following date: \_\_\_\_\_.
  - On or before   10   Business Days from Quarter 2 partner meeting.

**Task No. 13:** Facilitate quarterly partner meetings

- A. Services:** CONSULTANT will convene and facilitate at least four meetings per year among partners and WIOA- funded service providers to share best practices and foster collaboration. CONSULTANT will convene and facilitate a partner meeting in quarter 3.
- B. Deliverable:** Completion of quarter 3 partner meeting.
- C. Completion Time:** The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:
  - On or before the following date: March 31, 2022.
  - On or before      Business Days from \_\_\_\_\_.

**Task No. 14:** Quarter 3 partner meeting reports

- A. **Services:** CONSULTANT will create a report containing the meeting notes or minutes and any pertinent outcomes of the meeting shall be submitted via email to the Project Manager within ten days of each meeting.
- B. **Deliverable:** CONSULTANT will submit a report containing meeting notes or minutes and any pertinent outcomes of the meeting to the Project Manager.
- C. **Completion Time:** The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:
  - On or before the following date: \_\_\_\_\_.
  - On or before \_\_10\_\_ Business Days from Quarter 3 partner meeting.

**Task No. 15:** Facilitate quarterly partner meetings

- A. **Services:** CONSULTANT will convene and facilitate at least four meetings per year among partners and WIOA- funded service providers to share best practices and foster collaboration. CONSULTANT will convene and facilitate a partner meeting in quarter 4.
- B. **Deliverable:** Completion of quarter 4 partner meeting.
- C. **Completion Time:** The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:
  - On or before the following date: June 30, 2022.
  - On or before \_\_\_\_ Business Days from \_\_\_\_\_.

**Task No. 16:** Quarter 4 partner meeting reports

- A. **Services:** CONSULTANT will create a report containing the meeting notes or minutes and any pertinent outcomes of the meeting shall be submitted via email to the Project Manager within ten days of each meeting.
- B. **Deliverable:** CONSULTANT will submit a report containing meeting notes or minutes and any pertinent outcomes of the meeting to the Project Manager.
- C. **Completion Time:** The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:
  - On or before the following date: \_\_\_\_\_.
  - On or before \_\_10\_\_ Business Days from Quarter 4 partner meeting.

## EXHIBIT B: COMPENSATION

### Section 1 – Compensation Table

Part 1 – Compensation for Basic Services			
Column 1	Column 2	Column 3	Column 4
Task Nos.	Basis of Compensation	Invoice Period	Compensation
1, 2, 3, & 8	<input type="checkbox"/> Time & Materials <input checked="" type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Quarterly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$24000.00
4	<input type="checkbox"/> Time & Materials <input checked="" type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly <input checked="" type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$500.00
5	<input type="checkbox"/> Time & Materials <input checked="" type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly <input checked="" type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$500.00
6	<input type="checkbox"/> Time & Materials <input checked="" type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly <input checked="" type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$500.00
7	<input type="checkbox"/> Time & Materials <input checked="" type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly <input checked="" type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$500.00
9 & 10	<input type="checkbox"/> Time & Materials <input checked="" type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly <input checked="" type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$1000.00
11 & 12	<input type="checkbox"/> Time & Materials <input checked="" type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly <input checked="" type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$1000.00
13 & 14	<input type="checkbox"/> Time & Materials <input checked="" type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly <input checked="" type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$1000.00
15 & 16	<input type="checkbox"/> Time & Materials <input checked="" type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly <input checked="" type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$1000.00
Part 2 – Reimbursable Expenses			
<input checked="" type="checkbox"/> No expenses are separately reimbursable. The amount(s) in Column 4 of Part 1 include(s) payment for all expenses.		<input type="checkbox"/> Expenses are separately reimbursable in accordance with Subsection 10.5 of this Agreement. The maximum amount of reimbursable expenses is:	
		\$	
Part 3 – Subconsultant Costs			

<input checked="" type="checkbox"/> Subconsultant costs are <b>not</b> separately compensable. The amount(s) in Column 4 of Part 1 include(s) payment for subconsultants.	<input type="checkbox"/> Subconsultant costs are separately compensable in accordance with Subsection 10.6 of this Agreement. The maximum amount of compensation for subconsultant costs is:	\$
<b>Part 4 – Additional Services</b>		
<input checked="" type="checkbox"/> No money is budgeted for Additional Services, and the Director can not authorize any Additional Services.	<input type="checkbox"/> The Director may authorize the Consultant to perform Additional Services up to the following maximum amount:	\$
<b>Maximum Total Compensation</b> (sum of Parts 1 through 4):		\$30,000.00

**Section 2 – Schedule of Rates and Charges**

- Omitted.** No Schedule of Rates and Charges is included because the City will not be compensating the Consultant for any Basic Services on a “time & materials” basis.
- The following is the Schedule of Rates and Charges applicable to this Agreement:

**Section 3 – 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).”

**Section 4 – Payments to Consultant**

- A. City will not pay for unauthorized services rendered by Consultant or for claimed services which Consultant has not provided as required by this Agreement.
- B. Consultant shall comply with all of the terms and conditions of this Agreement, and all Exhibits and Certifications attached hereto, regardless of whether the City’s funding source is from sources other than those received under WIOA. If Consultant fails to comply with any of the terms and conditions of this Agreement, and all Exhibits and Certifications attached hereto, Consultant shall reimburse City from sources other than those received from City.



- C. Director may, without prior notice to Consultant, at any time in his or her absolute discretion, elect to suspend or terminate payment to Consultant, in whole or in part, terminate work or expenditures by Consultant 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 Consultant (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 Consultant 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 the Services.
  3. If Consultant, without having obtained City approval, has taken any action pertaining to the Services which requires City approval.
  4. If Consultant makes improper use of the Compensation Amount.
  5. If Consultant fails to comply with any of the terms and conditions of this Agreement including without limitation, Consultant's failure to carry out the Services or other obligations as described in any Exhibit to this Agreement.
  6. If Consultant submits to City any report which is incorrect or incomplete in any material respect, or is untimely.

## **EXHIBIT C: INSURANCE REQUIREMENTS**

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

### **A. Minimum Scope of Insurance**

Coverage shall be at least as broad as:

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

### **B. Minimum Limits of Insurance**

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

### **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 officer, employees, agents and contractors; or CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the CITY's Risk Manager.

### **D. Other Insurance Provisions**

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

1. Commercial General Liability and Automobile Liability Coverages
  - a. The City of San José, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, CONSULTANT; products and

completed operations of CONSULTANT; premises owned, leased or used by CONSULTANT; and automobiles owned, leased, hired or borrowed by CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.

- b. CONSULTANT's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of CONSULTANT's insurance and shall not contribute with it.
  - c. Any failure to comply with reporting provisions of the policies by CONSULTANT shall not affect coverage provided CITY, its officers, employees, agents, or contractors.
  - d. Coverage shall state that CONSULTANT'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 a waiver of subrogation in favor of the City of San José, its officials, employees, agents and contractors
2. Workers' Compensation  
Coverage shall contain a waiver of subrogation in favor of the City of San José, its officials, employees, agents and contractors
  3. All Coverages  
Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

**E. Acceptability of Insurers**

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

**F. Verification of Coverage**

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

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

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

**G. Subcontractors**

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

**EXHIBIT D**  
**GENERAL WIOA PROVISIONS**

**A. General**

CONSULTANT shall comply with the applicable requirements of the Workforce Innovation and Opportunity Act (WIOA), 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 WIOA, and all other applicable federal, state and local rules, regulations and laws.

**B. Grievance Procedure**

CONSULTANT shall establish, seek CITY approval for, and distribute to all program participants a written description of its procedures for resolving program grievances and complaints. Said procedure shall be subject to approval by the CITY, and comply with applicable WIOA laws and regulations.

**C. Nondiscrimination**

CONSULTANT 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, CONSULTANT 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: Section 188 of the WIOA; 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.

**D. Accessibility**

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

## **E. Prohibited Activities; Debarment and Suspension; Lobbying Restrictions**

CONSULTANT shall comply with the applicable WIOA regulations prohibiting activities relating to political lobbying, sectarian, and pro- or anti- unionization activities. CONSULTANT 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.

## **F. Drug-Free Workplace**

CONSULTANT 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 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; and
  - b. CONSULTANT's policy of maintaining a drug-free workplace; and
  - 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 services under this AGREEMENT:
  - a. Will receive a copy of CONSULTANT's drug-free policy statement; and
  - b. Will agree to abide by the terms of CONSULTANT'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 CONSULTANT may be ineligible for award of future agreements if CITY determines that either of the following has occurred:
  - a. False certification; and/or
  - b. Violation of the certification by failing to carry out the requirements as noted above.

## **G. Environmental Compliance**

CONSULTANT 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).

## **H. 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 CONSULTANT purchases ownership with WIOA 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 CONSULTANT 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).

## **I. Buy American**

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

## **J. 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.

## **K. Additional Assurances**

1. CONSULTANT agrees to perform any and all other assurances required by any applicable law or regulation. CONSULTANT further agrees to execute any additional writing required to evidence such assurances if requested to do so.

2. CONSULTANT understands and agrees that the assurances contained in this AGREEMENT are material representations upon which CITY does and will continue to rely upon as the basis for entering into this AGREEMENT. CONSULTANT understands and agrees that any act or omission which is inconsistent with these assurances shall be deemed a material breach of this AGREEMENT, and cause for immediate termination pursuant to Section 10 of this AGREEMENT, entitled "TERMINATION". CONSULTANT shall immediately notify CITY of any change in facts or circumstances related to these assurances.
3. CONSULTANT represents and warrants that the information contained in this AGREEMENT is true and accurate to the best of its knowledge; that it is duly organized to operate under the laws of the State of California; that its signatory to this AGREEMENT is authorized to execute this AGREEMENT.
4. The purchase and disposition of property and supplies shall be governed by 20 C.F.R. Section 645.300, OMB Circular A-110, as revised and further amended, or 29 C.F.R. Parts 95 and 97, to the extent applicable. Real property shall not be purchased with WIOA funds. The purchase and disposition of capital equipment costing more than \$5,000 shall require CITY pre-approval. CONSULTANT shall maintain inventories and safeguard all equipment purchased with WIOA funds.

## CERTIFICATIONS

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### **Cert. 1.1** **DEBARMENT AND SUSPENSION CERTIFICATION**

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#### Instructions for Certification

1. By signing and submitting this proposal, the prospective recipient of federal assistance funds is providing the certification as set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective recipient of federal assistance funds knowingly rendered an erroneous certification, in addition to other remedies to the federal government, the Department of Labor (DOL) may pursue available remedies, including suspension and/or debarment.
3. The prospective recipient of federal assistance funds shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective recipient of federal assistance funds learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction”, “debarred”, “suspending”, “ineligible”, “lower tier covered transaction”, “participant”, “person”, “primary covered transaction”, “principal”, “proposal”, and “voluntarily excluded”, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549.
5. The prospective recipient of federal assistance funds agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the DOL.
6. The prospective recipient of federal assistance funds further agrees by submitting this proposal that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is



not required to check the List of Parties Excluded from Procurement or Non-Procurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the DOL may pursue available remedies, including suspension and/or debarment.

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### **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions**

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This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 C.F.R. Section 98.510, Participants' Responsibilities (updated and amended at 29 C.F.R. § 98.300 et seq.). The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

#### **(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS FOR CERTIFICATION)**

1. The prospective recipient of federal assistance funds certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
2. Where the prospective recipient of federal assistance funds is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**Jorge Escobar**

*Jorge L. Escobar, VCAS*  
jorge.escobar@sjeccd.edu (11/17/2021)  
Email: jorge.escobar@sjeccd.edu

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SIGNATURE

Jorge Escobar Vice Chancellor Administrative Services  
NAME and TITLE of AUTHORIZED REPRESENTATIVE

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ORGANIZATION

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**Cert. 1.2**  
**LOBBYING CERTIFICATION**  
**(For Contracts, Grants, Loans and Cooperative Agreements)**

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

1. No federally 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 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 federally 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 sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
4. 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 31 U.S.C. Section 1352. 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.

**Jorge Escobar**  
  
jorge.escobar@sjeccd.edu (11/17/2021)  
mailto:jorge.escobar@sjeccd.edu

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**SIGNATURE**

Jorge Escobar Vice Chancellor Administrative Services  
**NAME and TITLE of AUTHORIZED REPRESENTATIVE**

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## ORGANIZATION