

MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF SAN JOSE AND BAY AREA COMMUNITY RESOURCES, INC.
FOR
HOSTING CLIMATE ACTION CORPS FELLOWS

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made and entered into this 29th day of October 2021 (“Contract Date”) by and between the City of San José, a municipal corporation of the State of California (“Partner” or “City”) and Bay Area Community Resources, Inc., a California non-profit organization (“BACR”).

RECITALS

WHEREAS, BACR is the implementation lead of the California Climate Action Corps program; and

WHEREAS, the Climate Action Corps provides climate action support to organizations in California through service provided by AmeriCorps Fellows (“Fellows”). Fellows can only work on contracted and allowable service activities (implementing climate action projects, engaging volunteers, and transferring knowledge to organization staff); and

WHEREAS, the Climate Action Corps is being made available to Partners through funding provided by California Volunteers, Office of the Governor, in order to build resilience within communities to the impacts of climate change and foster and increase climate service opportunities for California. The high-profile nature of the program necessitates participation in storytelling and responsiveness to media engagement; and

WHEREAS, Partner desires to host a Fellow(s), and BACR desires to provide Fellows’ service to Partner. This document is to establish the basic guidelines and expectations between the Partner and BACR; and

WHEREAS, Partner and BACR enter into this Agreement in order to memorialize the terms of BACR's performance of the services and the Partner's obligations with respect thereto;

AGREEMENT

Section 1. Activities

BACR has contracted with AmeriCorps (formerly Corporation for National and Community Service – CNCS) through California Volunteers to implement the California Climate Action Corps. **Fellows can only work on service activities approved by AmeriCorps and must abide by Federal guidelines for AmeriCorps program implementation.**

Partner agrees that any Fellows assigned to the Partner will only participate in the activities described below:

- 1) Climate Action, Education, and/or Assessments: Assisting one or more organization to implement specific climate action, climate education, and/or climate assessment projects that they would otherwise not be able to complete.
- 2) Volunteer Engagement: Supporting community climate action by engaging, recruiting, and supporting volunteers.
- 3) Training and Professional Development: Up to 20% of Fellow service time (340 of 1,700 total hours) can be spent on training including an orientation at the start of the service term, regular trainings, and professional development and networking opportunities.

Federal guidelines further restrict certain activities, which cannot be engaged in by Climate Action Corps Fellows or Supervisors while charging time to the AmeriCorps program, accumulating service or training hours, or otherwise performing activities supported by the AmeriCorps program or AmeriCorps, this includes direct fundraising or grant writing which are not allowable activities in Climate Action Corps. **In addition to only working on contracted performance measure service activities, the following activities are prohibited** (see 45 CFR § 2520.65):

- 1) Attempting to influence legislation;
- 2) Organizing or engaging in protests, petitions, boycotts, or strikes;
- 3) Assisting, promoting, or deterring union organizing;
- 4) Impairing existing contracts for services or collective bargaining agreements;
- 5) Engaging in partisan political activities, or other activities designed to influence the outcome of an election to any public office;
- 6) Participating in, or endorsing, events or activities that are likely to include advocacy for or against political parties, political platforms, political candidates, proposed legislation, or elected officials;
- 7) Engaging in religious instruction, conducting worship services, providing instruction as part of a program that includes mandatory religious instruction or worship, constructing or operating facilities devoted to religious instruction or worship, maintaining facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization;
- 8) Providing a direct benefit to:
 - a) A business organized for profit;
 - b) A labor union;
 - c) A partisan political organization;
 - d) A nonprofit organization that fails to comply with the restrictions contained in section 501(c)(3) of the Internal Revenue Code of 1986 related to engaging in political activities or substantial amount of lobbying except that nothing in these provisions shall be construed to prevent participants from engaging in advocacy activities undertaken at their own initiative; and
 - e) An organization engaged in the religious activities described above, unless CNCS assistance is not used to support those religious activities;
- 9) Conducting a voter registration drive or using CNCS funds to conduct a voter registration drive;
- 10) Providing abortion services or referrals for receipt of such services; and
- 11) Such other activities as CNCS may prohibit.

Fellows, like other private citizens, **may** participate in the above listed activities **on their own time, at their own expense, and on their own initiative**. However, the AmeriCorps logo **must not** be worn while doing so.

Per Federal Guidelines and BACR policies, Climate Action Corps Programs and activities must follow equal opportunity employment requirements and be accessible to persons with disabilities by providing reasonable accommodation. In support of this:

- 1) BACR and Partner will comply with Equal Opportunity Employment guidelines.
- 2) BACR and Partner will endeavor to make reasonable accommodations to known physical or mental limitations of qualified AmeriCorps members with disabilities unless the accommodation would impose an undue hardship on the program operations.
- 3) BACR and Partner will endeavor to accommodate the sincere religious beliefs of AmeriCorps Members to the extent such accommodation does not pose an undue hardship on the Organization's operations.
- 4) BACR and Partner will not allow any form of retaliation against individuals who raise issues of equal employment opportunity or reasonable accommodation.

II. BACR Responsibilities

BACR will perform the following services:

- 1) General Program Responsibilities
 - a) Recruit Fellows.
 - b) Provide clear guidelines to Fellows regarding AmeriCorps regulations and expectations.
 - c) Work to provide support and guidance for Fellows, addressing any concerns that might develop during the service year.
 - d) Work to provide support and guidance for Partners, addressing any concerns that might develop during the service year in conjunction with Program Director and CV.
- 2) Fellow Responsibilities
 - a) Pass a state, national, and National Sex Offender Public Website (NSOPW) background check before starting their service year.
 - b) Complete at least 100 hours of training through dedicated Fellow training, development, and service days.
 - c) Serve an average of 37 hours per week for 11 months, serving a minimum of 1700 total hours.
 - d) Comply with guidelines for performance measures and abide by regulations on prohibited activities described in Section I above.
 - e) Complete accurate project reporting in a timely manner as required by AmeriCorps, including: hours served, climate actions/education/assessments completed, volunteers recruited and supported.
 - f) Identify as a Fellow and wear AmeriCorps lapel pins or gear during service hours.
 - g) Participate in days of national service including, but not limited to: Martin Luther King, Jr. Day of Service; 9/11 Day of Remembrance; State Day of Service, and AmeriCorps Week Service Day.

III. Partner Responsibilities

Partner will perform the following services:

- 1) Support Responsibilities:

In order to provide a clear and well-defined service experience for participating Fellows, Partner shall:

 - a) Identify one staff member to act as the “Site Supervisor” for the project and point person for both the Fellow and BACR staff.
 - b) Site Supervisor shall support project implementation and professional development by:
 - i) Setting aside at least 1 hour/week to check in with each Fellow and provide assistance for approved projects.
 - ii) Familiarizing Fellows to the host organization (including safety procedures and protocols), resources, and project scope.
 - iii) Completing an initial performance assessment of each Fellow (survey and goal setting) within 1 month of the start of the service year; conducting a mid-year performance review; and completing a final performance review survey prior to the end of the service year.
 - iv) Seeking opportunities to integrate Fellows’ professional goals into project activities.
 - v) As appropriate, facilitating Fellows’ transition at the end of their service year by introducing Fellows to relevant colleagues and networks.
 - vi) Provide adequate professional workspace for Fellows (e.g., desk, computer, phone), and ensure that site and workplace are accessible to individuals with disabilities if needed.
 - vii) If needed due to shelter-in-place requirements, be able to support remote service for Fellows (e.g. remote access to files; plans for remote check-in, support, and verification of hours; technology support for remote work).
 - viii) As applicable to project activities and Fellow role, Partner is required to follow state and local public health guidelines to ensure appropriate COVID-related training, support, and protection for

Fellows, and to avoid placing them in unsafe conditions or asking them to conduct activities without appropriate safety management protocols in place.

- c) Not displace Partner staff or volunteers through the use of Climate Action Corps Fellows, nor have Climate Action Corps Fellows perform any services or duties that would supplant the hiring of employed workers.
- d) Not offer the Climate Action Corps Fellow part-time work that is substantially similar to their Climate Action Corps scope of work, nor offer them full-time employment with a start date prior to the Service Year-end date.

2) **Collective Impact Responsibilities:**

In order to support success, realize the program's desired collective impact, and assist with demonstrating California's commitment to service, Partner shall:

- a) Advance community climate goals by developing defined project scope(s) to be completed during the service term. Defined scopes shall:
 - i) Identify climate action, education, and/or assessment targets, tracking, and reporting methods.
 - ii) Specify Fellow roles in advancing projects.
- b) Support broader community engagement in climate action activities by:
 - i) Hosting at least 3 volunteer events that Fellows can support during the service term.
 - ii) Posting volunteer opportunities Fellows are involved with on VolunteerMatch as Climate Action Corps opportunities.
 - iii) Defining at least one volunteer event as a "Climate Action Day" that connects with the broader Climate Action Corps movement.
- c) Support implementation of project(s) by:
 - i) Ensuring service activities are consistent with defined scope and in line with program goals.
 - ii) Keeping BACR staff apprised of project developments and/or challenges, and working to redefine project scope(s) and goals as necessary.
 - iii) If challenges arise (related to professionalism, work products, etc.), provide specific written feedback to the Fellow and share with BACR staff in a timely manner so BACR staff can assess the challenges and intervene as needed.
- d) Submit a monthly progress report that includes:
 - i) Narrative regarding project activity and notable community / service outcomes to date.
 - ii) Specific outputs for climate actions/assessments completed; volunteers engaged and/or supported; people engaged through trainings, presentations, and other educational programming.
 - iii) Upcoming events and activities suitable for sharing or volunteer engagement.
- e) Support broader storytelling and collective impact by:
 - i) Supporting any additional project reporting defined as requested by BACR program staff.
 - ii) Allowing BACR to share results of all reporting with California Volunteers and AmeriCorps for required grant reporting.
 - iii) Sharing climate action activities and outcomes through social media and press as appropriate and tagging BACR and CV communications teams where relevant.
 - iv) Facilitating participation in site events and leadership connections for BACR Staff and/or California Volunteers Staff.
 - v) Assist with occasional site visits to Partner by BACR staff and/or California Volunteers staff.

IV. Reimbursable Expenses

BACR does not cover expenses related to the service project. All project-related expenses are the responsibility of Partner.

Should Partner wish to have Fellow incur project-related expenses for reimbursement, those expenses shall be submitted to Partner in writing for approval prior to Partner being charged for reimbursement for an expense

incurred during the completion of activities outlined in Section II.

V. Term

This MOU will become effective from the Contract Date and shall continue through December 31, 2022.

VI. Key Officials

The individuals listed below are identified as key personnel considered essential to the project being performed under this MOU:

For BACR

Job Title: Director Climate Action Corps

Name: Rola Halawanji

Address: 11175 San Pablo Ave, El Cerrito, CA 94530

Phone Contact: 562-852-3382

Email Contact: rhalawanji@bacr.org

For Partner

Job Title: Deputy Director

Name: Julie Benabente

Address: 200 E. Santa Clara St., 10th Floor, San Jose CA 95113

Phone Contact: (408) 975-2537

Email Contact: Julie.benabente@sanjoseca.gov

No change in key officials will be made by either BACR or Partner without written notification thirty days in advance of the proposed change. The notification will include a justification in sufficient detail to permit evaluation of the impact of such a change on the scope of work.

VII. Insurance

BACR agrees to have and maintain the policies set forth in the attached Exhibit A, entitled "INSURANCE". All policies, endorsements, certificates, and/or binders must be approved by the Director of Finance or the Director's authorized designee ("Risk Manager") as to form and content. These requirements are subject to amendment or waiver if so approved, in writing, by the Risk Manager. BACR agrees to provide City with a copy of all policies, certificates, and/or endorsements upon execution of this MOU.

VIII. Indemnity

To the greatest extent allowed by law, BACR agrees to indemnify, defend (with counsel approved by the City) and hold harmless City, its officers and employees against any claim, loss, or liability arising out of or resulting in any way from the Fellow's placement with the City or BACR's performance of this Agreement. The Parties acknowledge that the Fellows are not employees of the City and are therefore not entitled to City benefits such as medical, dental or retirement benefits. BACR will explain this to the Fellows and will indemnify, defend and protect the City against any claims from any of the Fellows, or BACR employees or officers for any City benefits. Neither the City's payment of grant funds nor BACR's acceptance of such funds operate as a waiver of City's right to indemnification.

IX. Termination

It is mutually agreed by all Parties to this MOU that:

1. In the event that a Party no longer approves implementation of any of the provisions referenced in this MOU, the individual Parties agree to promptly confer to determine what, if any, modifications to this MOU should be made to address the issue(s) of concern.
2. In the event that a Party no longer desires to be a part of this MOU or any modification(s), then the individual Party in their sole discretion may terminate their relationship within this MOU.
3. Written notice must be provided by the Party desiring to withdraw from the MOU at least thirty days prior to termination.

X. Miscellaneous Provisions

- A.) Counterparts. This MOU 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.
- B.) Electronic Signatures. Unless otherwise prohibited by law or City policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a writing as set forth in Evidence Code Section 1550. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the City.
- C.) Non-Discrimination. With respect to any action taken by BACR under this MOU, BACR will not discriminate against or grant preferential treatment to any person or firm on the basis of race, sex, color, age, marital status, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin.
- D.) Modifications. Neither this MOU, nor any rights or obligations hereunder, may be assigned, delegated, transferred or sublicensed by either party, by operation of law or otherwise, without the express prior written approval of the other Party. This MOU cannot be modified orally. This MOU may be modified only by a written amendment executed by both Parties.
- E.) Intellectual Property Rights. All rights and intellectual property rights (including copyrights), in any work, including, without limitation, all plans, research results, publications, developments, reports, processes, programs, analyses, website content, and other material created or developed by the Fellow will be licensed to the City on royalty-free basis.
- F.) Compliance with Laws. The Parties agree to comply with all federal, state, and local laws and regulations in performance of their obligations under this MOU.
- G.) Integrated Agreement. This MOU represents the entire understanding between BACR and the City with respect to the matters contained in this MOU. No prior oral or written understanding will be of any force or effect with respect to the matters in this MOU.
- H.) Severability. If any provision in this MOU is found by a court of law to be illegal or unenforceable, the MOU will remain in full force and effect as if that provision, section or paragraph were not written into this MOU, unless the omitted language is integral to the Parties’ intention and purpose of entering into this Agreement.

- I.) No Legal Relationship. By entering into this MOU, the Parties are not forming, nor do they intend to form a partnership, agency, or any other legal entity relationship. No Party is authorized to bind or to act as the agent or legal representative of the other Party for any purpose, and neither Party is granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of any other Party.

- J.) Books and Records. BACR must maintain all documents and records which demonstrate performance under this MOU for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this MOU. BACR must take such records and documents available for inspection or audit, at any time during regular business hours, upon written request by the City Auditor, the City Manager, the City Attorney, or the City's Director of Environmental Services. Unless otherwise agreed by BACR and City, such records and documents must be made available at BACR's address of record indicated in this MOU.

- K.) Authority. Each person executing this MOU represents and warrants that he or she has the authority to bind his or her respective party to the performance of its obligations hereunder and that all necessary board of directors' and other approvals have been obtained.

CITY OF SAN JOSE, a municipal corporation of the State of California



 Sarah Zarate (10/29/2021)

 Email: sarah.zarate@sanjoseca.gov

 SARAH ZARATE Date:

 Director

APPROVED AS TO FORM:



 Colleen Winchester (10/26/2021)

 Email: colleen.winchester@sanjoseca.gov

 COLLEEN WINCHESTER Date:

 Sr. Deputy City Attorney

BAY AREA COMMUNITY RESOURCES, INC., a California non-profit corporation



 arivera@bayac.org (10/26/2021)

 Email: arivera@bayac.org

 Name: Adolfo Rivera Date:

 Title: Director National Service Program

**EXHIBIT A
INSURANCE**

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

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

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

Any limits requirement may be met with any combination of primary and excess coverage so long as the excess coverage is written on a "follow form" or umbrella basis.

C. Deductibles and Self-Insured Retentions

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

D. Other Insurance Provisions

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

1. Commercial General Liability and Automobile Liability Coverages

- a. The City of San Jose, its officers, employees, and agents 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, and agents.
- b. CONSULTANT's insurance coverage shall be primary insurance as respects CITY, its officers, employees, and agents. Any insurance or self-insurance maintained by CITY, its officers, employees, or agents 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, and agents.
- 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, its officers, employees, and agents.

2. Workers' Compensation and Employers' Liability

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

3. Claims Made Coverages

If coverage is obtained on a “claims made” policy form, the retroactive date shall precede the date services were initiated with the City and the coverage shall be maintained for a period of three (3) years after termination of services under this Agreement.

4. All Coverages

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

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

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

Certificate Holder
City of San Jose—Finance
Risk Management
200 East Santa Clara Street, 14th Floor Tower
San Jose, CA 95113-1905

G. Subcontractors

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