

**AGREEMENT BETWEEN
THE CITY OF SAN JOSE
AND
WORKING PARTNERSHIPS USA
FOR USE OF CITY OFFICE SPACE**

This AGREEMENT is made and entered into this 6th day of December, 2021, by and between the CITY OF SAN JOSE, a municipal corporation (“CITY”) and WORKING PARTNERSHIPS USA, a California nonprofit corporation (“WPUSA”).

RECITALS

WHEREAS, CITY operates office space located at 1608 Las Plumas Avenue (“Las Plumas”), which will be used by the CITY’s Office of Economic Development (“OED”) for its work2future programs; and

WHEREAS, CITY’s Director of OED (“Director”) is charged with the responsibility of supervising the use of Las Plumas; and

WHEREAS, WPUSA operates a program for the Santa Clara County Trades Orientation Program (“TOP”); and

WHEREAS, WPUSA desires to use the CITY’s office space at Las Plumas for the purposes of conducting the TOP; and

WHEREAS, CITY desires to provide office space at Las Plumas to WPUSA for the TOP;

NOW, THEREFORE, the parties hereby agree as follows:

SECTION 1. TERM OF AGREEMENT

The term for this AGREEMENT shall commence on January 1, 2022 and shall continue through December 31, 2028, unless terminated earlier pursuant to the

provisions contained herein. In the event that OED no longer occupies any portion of Las Plumas, the term of this AGREEMENT shall end on the same date that OED relinquishes occupancy.

SECTION 2. PERMISSION GRANTED

- A. CITY hereby grants to WPUSA the revocable right and privilege to operate TOP in the spaces designated as CITY office spaces, specified in detail in **EXHIBIT A**, entitled "LOCATION," which is attached hereto and incorporated herein (the "office space").
- B. WPUSA shall have the non-exclusive right to use one classroom in Las Plumas for TOP Multi-Craft Curriculum ("MC3") classes, when in session, as well as for enrichment workshops offered to TOP participants. The classroom shall be assigned at the discretion of OED/work2future, and shall be sized to accommodate at least 35 students, and will include student desks or tables/chairs, instructor podium or desk, whiteboard, and A/V equipment for instructional presentations. WPUSA shall also have access to locking storage to keep TOP materials in the room between classes.
- C. WPUSA shall have the exclusive and continuous right to one workstation to be assigned at the discretion of OED/work2future for TOP staff / instructors / clients to use onsite at Las Plumas for activities associated with TOP. Workstation will include a computer.
- D. WPUSA shall have the non-exclusive right to hold "hands-on" TOP construction workshops either in the Las Plumas center or on the outdoor portions of the property, subject to space availability, and in compliance with all health and safety regulations.
- E. WPUSA shall have access to the Las Plumas facilities at scheduled times as needed for the TOP classes and services, including early mornings, evening or weekends as needed.
- F. Upon the expiration or earlier termination of this AGREEMENT, WPUSA shall remove all personal property from Las Plumas.

- G. WPUSA agrees that CITY'S authorized representatives, at any time, upon reasonable advance notice to WPUSA, during normal business hours, shall have access to and right to examine the offices and facilities engaged in performance of this AGREEMENT.
- H. The rights herein given to WPUSA are revocable contract rights only and in no respect shall the same constitute or be construed as granting a leasehold interest in any of the real or personal property described in this AGREEMENT.
- I. WPUSA shall establish operating hours with the review and consent of the Director.

SECTION 3. UTILITIES AND SERVICES

- A. CITY agrees to pay all costs for water, gas and electric utilities related to the office space. CITY agrees to pay for all costs of janitorial service to the office space. CITY agrees to pay all costs for telephone and related services, such as voice mail and Internet access, for three employees at the office space. CITY agrees to pay all costs for computer equipment and computer support services for two employees at the office space.
- B. CITY agrees to provide standard office furnishings and equipment for one (1) employee.
- C. WPUSA, at its sole cost and expense, shall restore the office space to their original condition upon expiration or revocation of this AGREEMENT.

SECTION 4. SECURITY

WPUSA shall provide for the safety and security of WPUSA's supplies and equipment while used or stored within the office spaces. It is further understood and agreed that CITY in no way purports to be a bailee and is in no way responsible for lost, stolen, or damaged property. WPUSA shall, at all times, act to insure the security of the office spaces. WPUSA shall adhere to emergency and safety procedures and perform inspections of office spaces as developed and determined by City staff.

SECTION 5. QUALITY OF OPERATIONS

WPUSA shall, at all times, conduct operations in a professional manner and, incident thereto, render to the public, using the office spaces, efficient and courteous service. In the event that the Director finds that service rendered by WPUSA is substandard or that any other provisions of the AGREEMENT are not being adequately performed or complied with, WPUSA, upon being advised of the non-performance or non-compliance, shall immediately correct violations, deficiencies or omissions which cause the non-performance or non-compliance. If WPUSA fails to take corrective action immediately which cures the violation, deficiency or omission causing non-conformance or non-compliance, this AGREEMENT shall terminate at the sole discretion of the Director and neither CITY nor the University shall have any further obligations whatsoever to permit the use of the office spaces by WPUSA.

SECTION 6. EMPLOYEES AND VOLUNTEERS

- A. WPUSA's employees and volunteers shall be solely responsible for operating the TOP. CITY shall have no obligation or responsibility to provide staff or services for the TOP beyond the provision of the TOP Premises pursuant to this AGREEMENT. Any and all employees and volunteers engaged by WPUSA in conducting the operations of the office spaces shall be qualified to perform the duties assigned to them by WPUSA.
- B. WPUSA and WPUSA's agents and employees shall be at all times independent contractors and shall not be considered agents or employees of CITY and shall not be entitled to any salary, fringe benefits, pension, worker's compensation, sick leave, insurance, or any other benefit or right connected with employment by CITY, or any compensation from CITY whatsoever, and the WPUSA hereby expressly waives any claim it may have to any such rights.

SECTION 7. COMPLIANCE WITH LAWS

- A. WPUSA shall comply with CITY policies and all applicable state, federal and local laws, regulations and rules related to the use and operation of the office spaces, including, but not limited to, laws, regulations and rules applicable to health, safety and equal opportunity employment.

- B. WPUSA shall pay before delinquency any and all taxes (including sales taxes), assessments, licenses, fees and other public charges which may be levied, assessed or imposed upon any of WPUSA's interest, or which may be imposed upon WPUSA's business, or which may be imposed upon WPUSA for the privilege of operating office spaces, or which may be imposed upon any property of WPUSA.

SECTION 8. ASSIGNABILITY

This AGREEMENT is not assignable, in whole or in part, by WPUSA and any attempt by WPUSA to assign any rights, duties, or obligations arising under the provisions of this AGREEMENT shall be void and of no effect. Further, any assignment or attempt at assignment by WPUSA shall constitute a material breach for which this AGREEMENT is automatically terminated without notice.

SECTION 9. NONDISCRIMINATION

In the performance of this AGREEMENT, WPUSA agrees not to exclude or discriminate against person on the basis of age, sex, race, religion or ethnic background.

SECTION 10. WAIVER OF CLAIMS

WPUSA hereby waives all claims or causes of action against CITY, its officers, employees or agents which WPUSA may have at any time for damage to or loss of property of any type or form or for injury to persons in, about or upon the office spaces, from any cause or causes arising at any time, except for the active affirmative negligence or willful act of CITY, its officers, employees or agents, and to which WPUSA in no way contributed, either actively or passively, to causing such damage, loss or injury, either directly or through any other person, agent, partner or contractor.

SECTION 11. INDEMNIFICATION AND HOLD HARMLESS

WPUSA agrees to defend, indemnify and hold harmless CITY from and against any and all claims, demands, causes of action, or liabilities incurred by CITY arising from, in whole or in part, directly or indirectly, WPUSA's acts or omissions under this

AGREEMENT, except as may arise from the gross negligence or willful misconduct of CITY. In any action or claim against CITY in which WPUSA is defending CITY, CITY shall have the right to approve legal counsel providing CITY's defense and such approval shall not be unreasonably withheld. WPUSA further agrees to release CITY from any and all claims for any damages, including property damage, injury or death occurring or arising out of use of CITY's property, except as may be caused by the CITY's gross negligence or willful misconduct.

CITY shall protect, defend, indemnify and hold harmless WPUSA, its officers, employees and agents against any action, demand, claim, loss or liability arising out of or resulting in any way from this AGREEMENT or any actions taken, work performed or service provided under this AGREEMENT. CITY's obligations to indemnify and hold harmless exclude only such action, demand, claim, loss or liability which is due to the sole negligence or willful misconduct of WPUSA and/or its employees. All of CITY's obligations under this Section are intended to apply to the fullest extent permitted by law and shall survive the expiration, completion or sooner termination of this AGREEMENT. In any action or claim against WPUSA in which CITY is defending WPUSA, WPUSA shall have the right to approve legal counsel providing FOUNDATION defense.

SECTION 12. INSURANCE REQUIREMENTS

WPUSA agrees to have and maintain the policies set forth in **EXHIBIT B**, entitled "INSURANCE REQUIREMENTS," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Risk Manager of the City of San José as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. WPUSA shall provide, upon request by CITY, a copy of the insurance policies. CITY shall not disclose the terms, conditions, limitations, or exclusions of the policy to their parties (except to employee, consultants, contractors or agents of CITY) unless required by law.

SECTION 13. TIME OF ESSENCE/BREACH

Where performance of a covenant is specified herein to be on or before a certain date, time shall be of the essence of said covenant. Performance by WPUSA of each and every condition, covenant or provision of the AGREEMENT is material, the breach of which shall constitute a material breach of this AGREEMENT for which the Director may terminate this AGREEMENT.

SECTION 14. DEFAULT AND TERMINATION

- A. Each of WPUSA's obligations under this AGREEMENT shall be deemed material. If WPUSA fails to perform any of its obligations under this AGREEMENT, CITY may terminate this AGREEMENT upon 7 days advance written notice ("Notice Period") to WPUSA, specifying WPUSA's breach and providing WPUSA with either the opportunity to cure the specified breach or the opportunity to commence to cure the specified breach within the Notice Period in those instances where the specified breach cannot reasonably be cured within the Notice Period. In the event that WPUSA fails to cure or to commence to cure the specified breach within the Notice Period, CITY may terminate this AGREEMENT. Without limiting the generality of the foregoing, the occurrence of any one of the following events shall constitute a default of this AGREEMENT for which CITY may exercise its right of termination:
1. WPUSA's breach of any of the representations or warranties contained in this AGREEMENT.
- B. Nothing in this AGREEMENT shall be construed so as to deprive CITY of its rights and remedies at law or in equity against WPUSA.
- C. Director is authorized to terminate this AGREEMENT under this Section on CITY's behalf.

SECTION 15. AUTOMATIC TERMINATION

The rights and privileges given to WPUSA shall automatically be deemed terminated and at an end without any notice whatsoever for any of the following reasons:

- A. Any action taken or suffered by WPUSA under any insolvency or bankruptcy act, including the appointment of a receiver to take possession of all or substantially all of the assets of WPUSA.
- B. Any general assignment by WPUSA for the benefit of creditors.
- C. If applicable, the loss of WPUSA's corporate franchise for any reason.

SECTION 16. TERMINATION WITHOUT CAUSE

- A. WPUSA may terminate this AGREEMENT without cause during the term hereof upon giving not less than thirty (30) days advance, written notice to CITY.
- B. CITY may terminate this AGREEMENT without cause during the term hereof upon giving not less than thirty (30) days advance written notice to WPUSA.
- C. CITY and WPUSA may agree to terminate this AGREEMENT without prior written notice.
- D. The Director is authorized to decide, on the part of CITY, that this AGREEMENT is to be terminated and to furnish notice thereof to WPUSA.

SECTION 17. SURRENDER OF PREMISES

Upon termination of the rights and privileges given to WPUSA for any cause and for any reason, WPUSA shall immediately and forthwith surrender possession of the office spaces in as good a condition as when received, reasonable wear and tear, damage caused by weather conditions and damage caused by fire that was not proximately caused by the negligence of the WPUSA, its agents and employees excepted.

SECTION 18. VENUE

In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San José, California.

SECTION 19. PRIOR AGREEMENTS AND AMENDMENTS

This AGREEMENT, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may only be modified by a written amendment duly executed by the parties to this AGREEMENT.

SECTION 20. AUTHORITY AND STATUS OF WPUSA

WPUSA represents and warrants that the information contained in this AGREEMENT is true and accurate to the best of its knowledge; and that it is a duly organized validly existing nonprofit corporation in good standing under the laws of its place of incorporation; that its signatory to this AGREEMENT is authorized by resolution, by laws, or constitution of the nonprofit corporation, currently, in full force and effect, to execute this AGREEMENT on WPUSA's behalf. All notices required or permitted to be given under this AGREEMENT shall be in writing and personally delivered or sent by certified mail, postage prepaid and return receipt requested, addressed as follows:

CITY: City of San José
Monique Melchor, work2future Director
5830 Chambertin Drive
San Jose, CA 95118
Monique.melchor@sanjoseca.gov

WPUSA: Working Partnerships USA
Louise Auerhahn
2302 Zanker Road
San Jose, CA 95131
lauerhahn@wpusa.org

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail. The parties may change their respective addresses for purposes of delivering notices by sending notice of such change pursuant to this paragraph.

SECTION 21. NO FINANCIAL OBLIGATION

No financial obligations are intended or implied by this AGREEMENT.

SECTION 22. CONTRACT EXECUTION

This AGREEMENT may be executed in any number of separate 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 together shall constitute one and the same instrument.

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.

WITNESS THE EXECUTION HEREOF on the dates noted below.

APPROVED AS TO FORM

CITY OF SAN JOSE,
a municipal corporation

Arlene Silva Date

Sarah Zarate Date

Deputy City Attorney

Sarah Zarate
Sarah Zarate (12/6/2021)
Email: sarah.zarate@sanjoseca.gov

WORKING PARTNERSHIPS USA,
a California nonprofit corporation

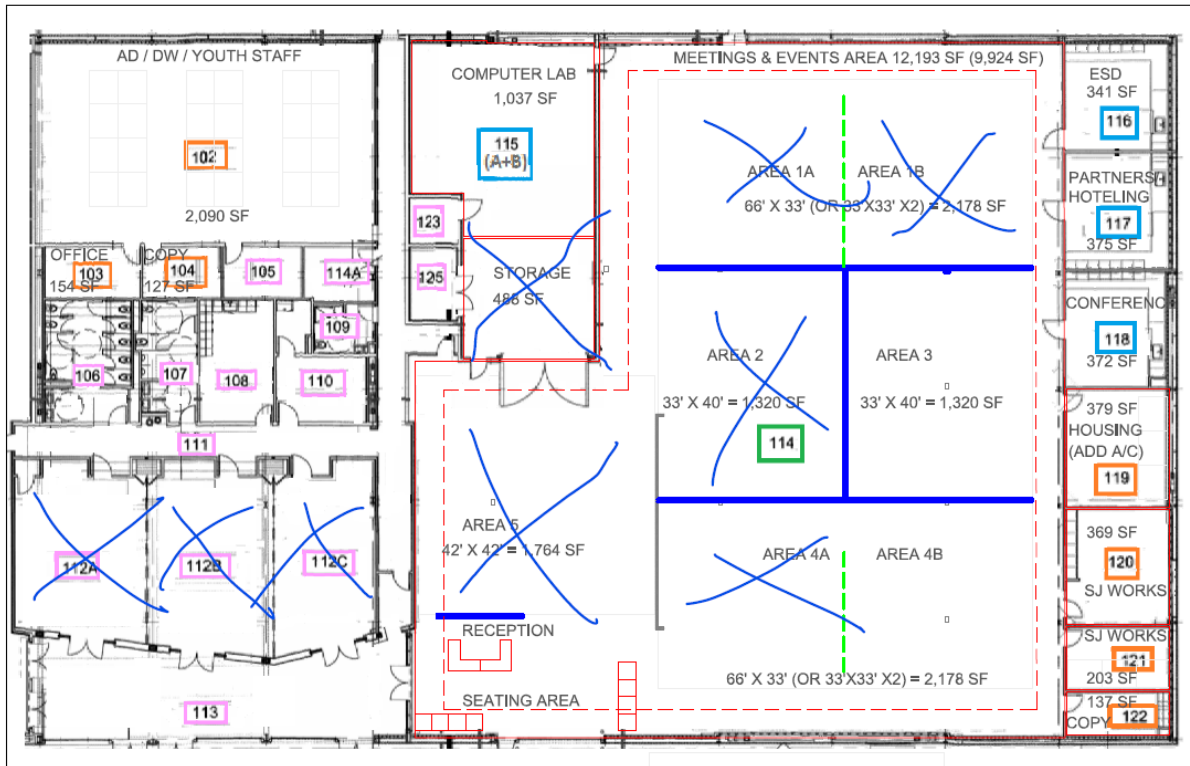
WORKING PARTNERSHIPS USA,
a California nonprofit corporation

Enrique Fernandez
Enrique Fernandez
elfernandez@unitehere19.org (12/3/2021)
Email: elfernandez@unitehere19.org

Leslie Rodriguez
Leslie Rodriguez
lrodriguez@calstrat.com (12/3/2021)
Email: lrodriguez@calstrat.com

EXHIBIT A LOCATION

WPUSA shall have non-exclusive use of the spaces marked with an "X" below as per the terms of this Agreement:



SCALE 1"=20'-0"
WORK 2 FUTURE OFFICE LAYOUT AT EIC

EXHIBIT B

INSURANCE REQUIREMENTS

CONTRACTOR, at CONTRACTOR'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 CONTRACTOR, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form 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.

B. Minimum Limits of Insurance

CONTRACTOR shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial 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

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 CONTRACTOR 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, CONTRACTOR; products and

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

b. CONTRACTOR'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 CONTRACTOR's insurance and shall not contribute with it.

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

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

e. Coverage shall contain 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

CONTRACTOR 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, 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

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