

**AGREEMENT FOR PLACEMENT OF AMERICORPS FELLOWS
BETWEEN
THE CITY OF SAN JOSE
AND
BAY AREA COMMUNITY RESOURCES, INC.**

THIS AGREEMENT is made and entered into this 13th day of January 2022 (“Contract Date”), by and between the CITY OF SAN JOSE, a municipal corporation (hereinafter “CITY”), and BAY AREA COMMUNITY RESOURCES, INC., a California nonprofit corporation (hereinafter “BACR”).

RECITALS

WHEREAS, BACR is a duly organized, validly existing nonprofit corporation in good standing under the laws of the State of California; and

WHEREAS, BACR seeks to place one (1) AmeriCorps Fellow (“Fellow(s)”) with the CITY’s Environmental Services Department to assist in implementing greenhouse gas reduction programs or other sustainability projects, and to monitor these services during the term of this AGREEMENT; and

WHEREAS, the CITY desires to retain the services of one (1) Fellow to assist the CITY’s Environmental Services Department and Silicon Valley Energy Watch program;

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1. SCOPE OF SERVICES.

BACR and CITY shall perform those services specified in detail in EXHIBIT A, entitled “SCOPE OF SERVICES”, which is attached hereto and incorporated herein.

SECTION 2. TERM OF AGREEMENT.

The term of this AGREEMENT shall be from the Contract Date to August 31, 2022, inclusive, subject to the provisions of SECTION 10 of this AGREEMENT.

SECTION 3. COMPENSATION.

- A. The compensation to be paid to BACR shall not exceed Twenty-One Thousand Dollars (\$21,000). The rate and schedule of payment is set out in EXHIBIT B, entitled "COMPENSATION," which is attached hereto and incorporated herein.
- B. BACR agrees that in the performance of this AGREEMENT, BACR shall adhere to City Council Policy 1-19, the following provisions of which are made applicable to this AGREEMENT:
1. It is the policy of the CITY that CITY's funds should not be used for the purchase of single-serving bottled water.
 2. The following circumstances shall constitute exceptions to City Council Policy 1-19:
 - a. Public safety emergencies, investigations and extended deployments or activation of the Office of Emergency Services.
 - b. High risk of cross-contamination with non-potable water.
 - c. Situations where there are no reasonable alternatives to bottled water, such as large public events and when large quantities of water may need to be distributed for health and safety reasons.
 3. BACR acknowledges and agrees that an invoice seeking reimbursement from CITY for the cost of single-serving bottled water under the exception referenced above in Subsection 2 (c) must be accompanied by a waiver form

provided by CITY and signed by the department head of the CITY department administering this AGREEMENT.

SECTION 4. METHOD OF PAYMENT.

EXHIBIT B, "COMPENSATION," sets forth the manner in which the CITY will compensate BACR.

SECTION 5. INDEPENDENT CONTRACTOR.

It is understood and agreed that BACR, in the performance of the work and services agreed to be performed by BACR, shall act as and be an independent contractor and not an agent or employee of CITY; and as an independent contractor, neither BACR nor any of BACR's officers, employees, subcontractors, agents, or Fellows shall obtain any rights to retirement benefits or other benefits which accrue to CITY's employees, BACR will explain this to the Fellows, and BACR hereby expressly waives any claim it may have to any such rights.

SECTION 6. ASSIGNABILITY.

The parties agree that the expertise and experience of BACR are material considerations for this AGREEMENT. BACR shall not assign or transfer any interest in this AGREEMENT nor the performance of any of BACR's obligations hereunder, without the prior written consent of CITY, and any attempt by BACR to so assign this AGREEMENT or any rights, duties or obligations arising hereunder shall be void and of no effect. BACR may not engage any subcontractor to perform services otherwise to be performed by BACR under this AGREEMENT without the prior written consent of the CITY.

SECTION 7. INDEMNIFICATION.

BACR shall defend, indemnify and hold harmless CITY, its officers, employees and agents against any claim, loss or liability arising out of or resulting in any way from work performed under this AGREEMENT due to the willful or negligent acts (active or

passive) or omissions by BACR's officers, employees or agents. BACR will indemnify, defend, and protect the CITY against any claims from any Fellows or BACR employees or officers for any CITY benefits. Neither acceptance of said services and duties by CITY, nor the CITY's payment of funds, nor BACR's acceptance of such funds shall operate as a waiver of such right of indemnification.

SECTION 8. INSURANCE REQUIREMENTS.

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

SECTION 9. NONDISCRIMINATION.

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

SECTION 10. TERMINATION.

- A. CITY and BACR shall each have the right to terminate this AGREEMENT, without cause, by giving not less than thirty (30) days' written notice of termination.

- B. If BACR fails to perform any of its material obligations under this AGREEMENT, in addition to all other remedies provided by law, CITY may terminate this AGREEMENT immediately upon written notice.

- C. CITY's Director of Environmental Services is empowered to terminate this AGREEMENT on behalf of CITY.

SECTION 11. GOVERNING LAW.

CITY and BACR agree that the law governing this AGREEMENT shall be that of the State of California.

SECTION 12. COMPLIANCE WITH LAWS.

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

SECTION 13. ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY.

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

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

- A. 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.)
- B. Use of Energy Star Compliant equipment.

- C. Vehicles and vehicle operations (i.e. Alternative Fuel, Hybrid, etc.)
- D. Internal waste reduction and reuse protocol(s).
- E. Water and resource conservation activities within facilities, including bans on individual serving bottled water and the use of compostable food service products, etc.

SECTION 14. CONFIDENTIAL INFORMATION.

All data, documents, discussions or other information developed or received by or for BACR in performance of this AGREEMENT are confidential and not to be disclosed to any person except as authorized by CITY, or as required by law.

SECTION 15. OWNERSHIP OF MATERIALS.

All reports, documents or other materials developed or discovered by BACR or any other person engaged directly or indirectly by BACR to perform the services required hereunder shall be and remain the property of CITY without restriction or limitation upon their use.

SECTION 16. WAIVER.

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

SECTION 17. BACR'S BOOKS AND RECORDS.

- A. BACR shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to

charges for services, or expenditures and disbursements charged to CITY for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to BACR pursuant to this AGREEMENT.

- B. BACR shall maintain all documents and records which demonstrate performance under this AGREEMENT for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this AGREEMENT.

- C. Any records or documents required to be maintained pursuant to this AGREEMENT shall be made available for inspection or audit at no cost to CITY, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to CITY for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at BACR's address indicated for receipt of notices in this AGREEMENT. BACR acknowledges that under certain circumstances specified in California Government Code Section 8546.7, this AGREEMENT (if it involves an expenditure of \$10,000 or more of public funds) may be subject to examination and audit by the Auditor of the State of California pursuant to California Government Code Section 8546.7.

- D. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of BACR's business, CITY may, by written request by any of the above-named officers, require that custody of the records be given to CITY and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by BACR, BACR's representatives, or BACR's successor-in-interest.

SECTION 18. CONFLICT OF INTEREST.

BACR shall avoid all conflict of interest or appearance of conflict of interest in performance of this AGREEMENT. As of the date of entering into this AGREEMENT, BACR's employees assigned to perform services as specified in EXHIBIT A of this AGREEMENT ("BACR's Assigned Employees") shall not be required to complete and file a Form 700 with CITY's Clerk. In the event that the CITY subsequently determines to require BACR's Assigned Employees to complete and file a Form 700 with CITY's Clerk, CITY will notify BACR in writing of such requirement, including without limitation, instructions regarding the categories of economic interests subject to disclosure on the Form 700 ("Form 700 Notice"). BACR shall cause BACR's Assigned Employees to complete and file the Form 700 with CITY's Clerk and to submit a copy to Carol Boland, in accordance with the instructions specified in the Form 700 Notice, no later than thirty (30) days of the date of the Form 700 Notice.

SECTION 19. GIFTS.

- A. BACR is familiar with CITY's prohibition against the acceptance of any gift by a CITY officer or designated employee, which prohibition is found in Chapter 12.08 of the San José Municipal Code.
- B. BACR agrees not to offer any CITY officer or designated employee any gift prohibited by said Chapter.
- C. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this AGREEMENT by BACR. In addition to any other remedies CITY may have in law or equity, CITY may terminate this AGREEMENT for such breach as provided in SECTION 10 of this AGREEMENT.

SECTION 20. DISQUALIFICATION OF FORMER EMPLOYEES.

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

SECTION 21. NOTICES.

All notices and other communications required or permitted to be given under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To CITY: City of San José
Attn: Carol Boland, Environmental Services Department
200 East Santa Clara Street, 10th Floor Tower
San José, CA 95113-1905
carol.boland@sanjoseca.gov

To BACR: Bay Area Community Resources
Attn: Adolfo Rivera, National Service Director
11175 San Pablo Ave.
El Cerrito, CA 94530
arivera@bayac.org

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

SECTION 22. ACKNOWLEDGMENTS.

BACR must acknowledge that the services provided by the Fellows was made possible by the CITY, where appropriate, in written documents and informational materials as well as oral communications concerning the services by the Fellows placed with the CITY’s Environmental Services Department.

SECTION 23. 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 24. INTERPRETATION, PRIOR AGREEMENTS AND AMENDMENTS.

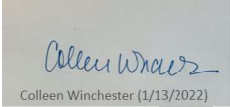
This AGREEMENT, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. In the event that the terms specified in any of the Exhibits attached hereto conflict with any of the terms specified in the body of this AGREEMENT, the terms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

SECTION 25. USE OF 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.

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

“CITY”



Colleen Winchester (1/13/2022)
Email: colleen.winchester@sanjoseca.gov

M:

CITY OF SAN JOSE, a municipal corporation

COLLEEN WINCHESTER
Senior Deputy City Attorney

By



Sarah Zarate (1/13/2022)
Email: sarah.zarate@sanjoseca.gov

SARAH ZARATE
Director, Office of the City Manager

“BACR”

BAY AREA COMMUNITY RESOURCES,
INC., a California nonprofit corporation

By



adolfo rivera
arivera@bayac.org (1/7/2022)
Email: arivera@bayac.org

ADOLFO RIVERA
National Service Director

EXHIBIT A
SCOPE OF SERVICES

- A. BACR is collaborating with public and nonprofit organizations across the state of California to recruit, train, and place AmeriCorps Fellows at public and nonprofit organizations, where they will assist in implementing greenhouse gas reduction programs or other sustainability projects. The Fellows' term of service starts no later than January 17, 2022. The term of service ends no later than August 31, 2022. While working for the CITY, which is also referred to in this EXHIBIT A as "Host Agency", Fellows will complete 1,200 hours total to receive an End of Program Segal Education Award of \$4,441.50. During their term of service, Fellows will implement programs that save energy, water, or waste; reduce greenhouse gas ("GHG") emissions; educate students in classrooms; help develop Greenhouse Gas Inventories, Climate Action Plans, and other capacity-building documents; or outreach to raise community engagement. Fellows will ideally devote an average minimum of 24 hours per week to directly working on emissions, water, waste, or energy reduction. If a Fellow is unable to complete their full 1,200 hours by the scheduled end date due to any unforeseen circumstances during their term they may, at the discretion of BACR and the CITY, be allowed time to complete their hours at the CITY, or at another approved agency where there are service opportunities available. The last day Fellows are eligible to earn hours for the 2021-2022 program year will be August 31, 2022.
- B. BACR agrees to:
1. Be the official employer-of-record for the Fellows.
 2. Pay the Fellows a living stipend of \$2,255.00/month, as well as provide coverage options for healthcare, childcare, and student loan deferment.
 3. Recruit, screen, and select a Fellow for a commitment of 1,200 hours over a period of eight months. Host Agency will assist in the recruitment and

selection of the Fellow, including, without limitation, developing a position description, conducting interviews, and participating in the final selection of the Fellow. If the Host Agency ultimately fails to select a Fellow, Host Agency will pay BACR a \$2,500 fee for the recruiting effort promptly following receipt of an invoice from BACR.

4. Explore reasonable next steps for recruitment in the event that BACR is unable to place a qualified Fellow at the Host Agency by the final possible start date. Next steps include a shorter term of service with corresponding lower payment amount (dependent on availability), postponement to future term of service, or whatever solution is deemed most beneficial to the parties.
5. Train and support Fellow with a comprehensive training program that includes a training manual, a week-long orientation led by an array of experts, monthly trainings, an overnight mid-year retreat, supervision meetings, and three performance reviews.
6. Work with the Host Agency to develop a specific Scope of Work plan for Fellow that aligns with the GHG reduction initiatives provided by Host Agency.
7. Define and develop metrics for the Fellow to measure and track the progress of resource reduction, K-12 education, capacity building, or community outreach throughout the placement.
8. Define and implement any corrections to Fellow's plan determined to be necessary based on feedback collected from Fellow and Host Agency.

C. The CITY agrees to:

1. Provide at least one specific GHG reduction initiative that the Fellow(s) can work on during their term of service. Initiatives must be well-defined, approved for implementation and include specific emissions, water, waste, or energy reduction, and/or education, community outreach, or capacity-building targets, or have the capacity to define specific project targets.

Host Agency will work with BACR to finalize a mutually agreed-upon Scope of Work plan no sooner than one month after the Fellow begins work.

2. Assign a Site Supervisor who will be available to devote no fewer than four (4) hours per month of one-on-one time with Fellow.
3. Complete monthly verbal reporting to BACR in regional supervisor check-in meetings, indicating whether progress is being made on the initiatives.
4. Provide feedback on program's effectiveness: three times a year, fill out and submit an evaluation form to provide feedback on Fellow activities and offer data on specific resource or GHG reduction metrics.
5. Attend or send a representative to the Partner Orientation and Mid-Year Call (via webinar).
6. Host Agency may not hire the Fellow as a full-time employee until and unless the Fellow completes their entire term of service described in this AGREEMENT. If Host Agency hires the Fellow before the end of the program year, Host Agency is subject to a \$2,500 fee for the time and resources spent on recruiting, training, and supporting the Fellow. BACR agrees to recruit another Fellow to complete the term of service if Host Agency desires, in which case the Host Agency must still pay BACR for the services described in this AGREEMENT and according to the payment schedule outlined in EXHIBIT B, "COMPENSATION". In the event that the Host Agency does not desire a replacement Fellow, effectively ending the term of service, Host Agency is subject to a \$2,500 fee for exiting the contract before the agreed upon end date and a \$2,500 fee for the time and resources spent on recruiting and training the Fellow, amounting to a total of \$5,000. The Host Agency will not be reimbursed for payments already made to BACR.
7. Allow BACR to share results from this program through grant reporting and other means as BACR deems appropriate.

8. Ensure that Fellows do not do the following while charging time to the AmeriCorps Program, accumulating service or training hours, or otherwise performing activities supported by the AmeriCorps Program:
 - a) Work directly on fundraising or grant-writing efforts;
 - b) Engage in any activity that is illegal under local, state or federal law;
 - c) Engage in activities that pose a significant safety risk to others;
 - d) Engage in any of the Prohibited Activities outlined in the Policies & Procedures handbook, including, but not limited to:
 - i. Attempting to influence legislation;
 - ii. Organizing or engaging in protests, petitions, boycotts, or strikes;
 - iii. Assisting, promoting, or deterring union organizing;
 - iv. Impairing existing contracts for services or collective bargaining agreements;
 - v. Engaging in partisan political activities, or other activities designed to influence the outcome of an election to any public office;
 - vi. 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;
 - vii. 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;
 - viii. Providing a direct benefit to a business organized for profit; a labor union; a partisan political organization; or a nonprofit

organization that fails to comply with the restrictions contained in section 501(c)(3) of the Internal Revenue Code of 1986 except that nothing in this section shall be construed to prevent participants from engaging advocacy activities undertaken at their own initiative; and

- ix. An organization engaged in the religious activities described in paragraph (g) of this section, unless AmeriCorps assistance is not used to support those religious activities;
 - e) Conducting a voter registration drive or using AmeriCorps-funded time to conduct a voter registration drive;
 - f) Providing abortion services or referrals for receipt of such services; and
 - g) Such other activities as AmeriCorps may prohibit.
 - h) Individuals may exercise their rights as private citizens and may participate in the activities listed above on their initiative, on non-AmeriCorps time, and using non-AmeriCorps funds.
9. Support and encourage the promotion of National Service through the following:
- a) Posting AmeriCorps and National Service information at all service sites
 - b) Posting a list of the above Prohibited Activities at all service sites
 - c) Ensuring Fellows wear appropriate uniforms or AmeriCorps pin as required by BACR
 - d) Allowing Fellows to leave the program site to participate in pre-arranged National Service identity activities and monthly training days.
 - e) Allowing Fellows to spend up to a maximum of 20% of their total hours on thematic professional development activities (including regular monthly programmatic training days).
10. Desired, but not required, to provide program-wide support by either:

- a) Facilitating at least one all-day training event for all Fellows; or
- b) Speaking during a session at one all-day training event for all Fellows.

EXHIBIT B
COMPENSATION

A. CITY hereby grants to BACR, and BACR hereby accepts a sum of up to Twenty-One Thousand Dollars (\$21,000) to be used for the placement and administration of services for one Fellow (on a "Service Term" of 1,200 hours or within eight months), with the CITY's Environmental Services Department, for work with the Building Performance Ordinance ("BPO") program. BACR will disburse these funds after CITY approval of an invoice from BACR upon full execution of this AGREEMENT. BACR shall submit invoices to the CITY for the full amount as specified below after the Fellow has been selected but prior to August 31, 2022. Payments from the CITY to BACR will be made according to the following schedule:

- Payment 1 – Due: January 31, 2022 – Amount: \$10,500
- Payment 2 – Due: March 31, 2022 – Amount: \$5,250
- Payment 3 – Due: May 31, 2022 – Amount: \$5,250

B. Should the CITY fail to select at least one Fellow after participating in the recruiting effort, then the CITY agrees to compensate BACR in the amount of Two Thousand Five Hundred Dollars (\$2,500) for the recruiting effort.

C. In the event of termination under Section 10 of this AGREEMENT, the following provisions shall apply:

1. Fellow Withdrawal: BACR cannot guarantee Fellow's participation for the full Service Term. If, before the end of the Service Term, Fellow leaves the Program voluntarily, is terminated by either BACR or Partner for performance-related reasons, or is hired by CITY as an employee, he or she will be considered withdrawn from the Program, and BACR and CITY

will discuss whether to find a replacement. If BACR or CITY decide not to replace Fellow, or if BACR fails to find a replacement after reasonable efforts to do so, then this AGREEMENT will terminate effective as of the date of Fellow's withdrawal from the Program.

2. Refund to CITY with Replacement: Following Fellow's withdrawal with replacement, BACR will refund to CITY a sum equal to the pro-rata share of the Compensation for the period between withdrawal and the starting date of the replacement Fellow.
3. Refund to CITY without Replacement: Following Fellow's withdrawal from the Program without replacement, BACR will: (a) refund to CITY a lump-sum amount equal to the pro-rata share of the Compensation from the date of the withdrawal through the end of the contract term.

D. In the event that a Fellow terminates his or her participation early, depending upon the CITY's needs, BACR staff will:

1. Recruit for a replacement should the Fellow leave prior to the late January/ early February spring semester registration into BACR certificate courses; or
2. Work with the CITY to transition the Fellow's work internally (to other Fellows/staff) in which case, BACR will reimburse the CITY for unexpended funds as detailed in paragraph C, above.

EXHIBIT C
INSURANCE REQUIREMENTS

BACR, at BACR'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 BACR, 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 insurance for all professional services rendered; and
5. Commercial Crime insurance covering employee dishonesty; forgery or alteration; computer fraud; and funds transfer fraud.

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

BACR 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 claim.
5. Commercial Crime Insurance: \$500,000 per claim.

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, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, BACR; products and completed operations of BACR; premises owned, leased or used by BACR; and automobiles owned, leased, hired or borrowed by BACR. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.
- b. BACR'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 BACR's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies by BACR shall not affect coverage provided CITY, its officers, employees, agents, or contractors.
- d. Coverage shall state that BACR'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, agents and contractors.

2. Workers' Compensation and Employers' Liability

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

Coverage shall contain an alternate employer endorsement in favor of the City of San José.

3. Claims Made Coverage

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

BACR shall furnish CITY with certificates of insurance and 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 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

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