

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

This First Amendment to the Agreement for Placement of AmeriCorps Fellows Between the City of San José and Bay Area Community Resources (“AGREEMENT”) is made and entered into this 29th day of June, 2022, by and between the CITY OF SAN JOSE, a municipal corporation (“CITY”), and BAY AREA COMMUNITY RESOURCES, INC., a nonprofit corporation (hereinafter “BACR”).

**RECITALS**

**WHEREAS**, on January 13, 2022, CITY and BACR entered into an agreement entitled “Agreement for Placement of AmeriCorps Fellows Between the City of San José and Bay Area Community Resources” (“AGREEMENT”); and

**WHEREAS**, CITY and BACR desire to amend the AGREEMENT to extend the term of the AGREEMENT to August 31, 2023, revise the Scope of Services and Partner Responsibilities in order to place two (2) AmeriCorps Fellows with the CITY’s Environmental Services Department over Fiscal Years 2021-2022 and 2022-2023, and increase the compensation for this amended scope of services;

**WHEREAS**, the CITY desires to retain the services of two (2) Fellows to assist the CITY’s Environmental Services Department and Energy and Water Building Performance Ordinance;

**NOW, THEREFORE**, THE PARTIES HEREBY AGREE AS FOLLOWS:

**SECTION 1.** SECTION 2, "TERM OF AGREEMENT" is amended to read as follows:

"The term of this AGREEMENT shall be from January 13, 2022 to August 31, 2023, inclusive, subject to the provisions of Section 10 of this AGREEMENT."

**SECTION 2.** SECTION 3, "COMPENSATION" is amended to read as follows:

- A. The compensation to be paid to BACR shall not exceed Forty-Two Thousand Dollars (\$42,000.00). 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 the CITY and signed by the department head of the CITY department administering this AGREEMENT.

**SECTION 3.** SECTION 21, "NOTICES" is amended to read as follows:

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 Whattam,  
Environmental Services Department  
200 East Santa Clara Street, 10th Floor Tower  
San José, CA 95113-1905  
[carol.boland@sanjoseca.gov](mailto: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](mailto: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 4.** EXHIBIT A, "SCOPE OF SERVICES" is amended to read as shown in REVISED EXHIBIT A, attached and incorporated into this First Amendment.

**SECTION 5.** EXHIBIT B, "COMPENSATION" is amended to read as shown in REVISED EXHIBIT B, attached and incorporated into this First Amendment.

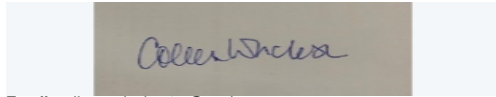
**SECTION 6.** EXHIBIT C, "INSURANCE REQUIREMENTS" is amended to read as shown in REVISED EXHIBIT C, attached and incorporated into this First Amendment.

**SECTION 7.** All of the terms and conditions of the original AGREEMENT not specifically modified by this First Amendment shall remain in full force and effect.

**SECTION 8.** COUNTERPARTS: This First Amendment 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 instruments.

**WITNESS THE EXECUTION HEREOF** on the date above.

APPROVED AS TO FORM:



Email: colleen.winchester@sanjoseca.gov

06/29/2022 GMT-07:00

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COLLEEN WINCHESTER  
Senior Deputy City Attorney

“CITY”

CITY OF SAN JOSE, a municipal corporation

By



Email: sarah.zarate@sanjoseca.gov

06/29  
/2022

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SARAH ZARATE,  
Director

“BACR”

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

By



Email: arivera@bayac.org

06/29/2022 GMT-07:00

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ADOLFO RIVERA  
National Service Director

**REVISED 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 First Fellows' term of service starts no later than January 17, 2022 and ends no later than August 31, 2022. The Second Fellow's term of service starts no later than January 16, 2023 and ends no later than August 31, 2023. 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 \$4,546.50. 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 the First Fellow is eligible to earn hours for the 2021-2022 program year will be August 31, 2022. The last day the Second Fellow is eligible to earn hours for the 2022-2023 program year will be August 31, 2023.
- B. BACR agrees to:
1. Be the official employer-of-record for the Fellows.
  2. Pay the Fellows a living stipend of \$2,636.00/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: two 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.

**REVISED**  
**EXHIBIT B**  
**COMPENSATION**

A. CITY hereby grants to BACR, and BACR hereby accepts a sum of up to Forty-Two Thousand Dollars (\$42,000) to be used for the placement and administration of services for two (2) Fellows over two (2) fiscal years (2021-2022 and 2022-2023; each on a separate "Service Term" of 1,200 hours or within eight months), with the CITY's Environmental Services Department, for work with the Energy and Water Building Performance Ordinance ("BPO") program. BPO 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 First 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

BACR shall submit invoices to the CITY for the full amount as specified below after the Second Fellow has been selected but prior to August 31, 2023.

Payments from the CITY to BACR will be made according to the following schedule:

- Payment 1 – Due: January 31, 2023 – Amount: \$10,500
- Payment 2 – Due: March 31, 2023 – Amount: \$5,250
- Payment 3 – Due: May 31, 2023 – 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, they 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.

**REVISED 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](mailto: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.