



## WORK SITE AGREEMENT

Between

CITY OF SAN JOSE

And

OUR CITY FOREST

The Agreement below describes the roles and responsibilities of both CITY OF SAN JOSE herein after CUSTOMER and OUR CITY FOREST herein after WORK SITE or CONTRACTOR, in relation to the placement of Career Catalyst/ SJ Works Program PARTICIPANTS (“PARTICIPANTS”) placed at WORK SITE. PARTICIPANTS are employees of the Foundation for California Community Colleges (“FOUNDATION”). FOUNDATION will act as employer of record for the PARTICIPANT and provide all payrolls and associated costs (i.e., workers' compensation, taxes, etc.). The FOUNDATION provides workers' compensation coverage for PARTICIPANTS.

### 1. WORK SITE Responsibilities

- 1.1 WORK SITE agrees to provide one or more CAREER CATALYST/SAN JOSE WORKS PARTICIPANT (hereafter called "PARTICIPANT") with the opportunity to work in jobs at WORKSITE, which will enhance long term employability skills through work exposure (career exploration) and to gain entry level work readiness skills (work maturity) for future employment opportunities. WORK SITE shall train the PARTICIPANT in work maturity skills and work readiness skills and in accordance with the agreed upon workplace competencies (See Attachment B, attached hereto and incorporated by reference, for Training Outline).
- 1.2 WORK SITE shall have the responsibility for the day-to-day control and supervision of PARTICIPANTS and must provide PARTICIPANT with supervision, training, and work assignments in accordance with the job description.
- 1.3 WORK SITE shall allow for monitoring visits by representatives of the FOUNDATION and CUSTOMER.
- 1.4 WORK SITE shall notify CUSTOMER and FOUNDATION if any position is subject to any state, federal or local minimum or prevailing wage requirements, or subject to the terms of a collective bargaining agreement prior to PARTICIPANT on-boarding.
- 1.5 WORK SITE shall not entrust PARTICIPANTS with the care of unattended premises, or unsupervised custody or control of cash, credit cards, valuables, or other similar property without the prior written approval of the FOUNDATION.
- 1.6 WORK SITE shall ensure PARTICIPANTS receive meal and rest breaks in compliance with both California Law and the FOUNDATION's Policy and Procedures manual.

WORK SITE agrees to accurately track and provide to CUSTOMER and FOUNDATION a time record for all hours worked by each PARTICIPANT on a bi-weekly basis. The time record shall include all of the PARTICIPANT's start and end times, as well as meal period and rest breaks. WORK SITE will be responsible for ensuring PARTICIPANT's enter and approve accurate timesheets. Billed rates will be increased to reflect overtime hours worked and meal period premiums according to state or local law.

- 1.7 WORK SITE shall provide the PARTICIPANT with supervision, safety instructions and safety related equipment that is required and/or is reasonable to protect against injury and/or illness while working at the WORK SITE. Where special clothing or equipment is provided to the WORK SITE's employees, the same shall be provided to the PARTICIPANT.
- 1.8 WORK SITE shall ensure that the PARTICIPANT is exposed to all the customary practices of the WORK SITE and the normal requirements of the job, including the WORK SITE's personnel practices and policies
- 1.9 The WORK SITE shall maintain the confidentiality of any information regarding the PARTICIPANT or his/her immediate family, which may be obtained through application forms, interviews, reports, or any other source.
- 1.10 WORK SITE shall adhere to all orders set forth by the County of Santa Clara pertaining to COVID-19. (Ref: <https://www.sccgov.org/sites/covid19/Pages/order-health-officer-033120.aspx>)

## **2. CUSTOMER Responsibilities**

- 2.1 CUSTOMER will visit the WORK SITE intermittently, but at least on a monthly basis for the purpose of monitoring this agreement and reviewing PARTICIPANT progress.
- 2.2 CUSTOMER will submit time sheets electronically if possible; otherwise, CUSTOMER will visit the WORK SITE to collect timesheets and submit for payroll processing or submit electronically as a preferred process.
- 2.3 CUSTOMER will provide case management services for the PARTICIPANTS, including managing all employment paperwork and on-boarding of PARTICIPANT.

## **3. Compliance with Federal, State, and Local Laws**

- 3.1 PARTICIPANTS must complete all legally required documentation and provide valid documentation to CUSTOMER prior to beginning paid work experience at the WORK SITE.
- 3.2 WORK SITE shall ensure that PARTICIPANTS who are under the age of 18 do not exceed 8 hours per day or 40 hours per week. If PARTICIPANTS over the age of 18 do exceed 8 hours per day or 40 hours per week, WORK SITE will be responsible for payment of overtime to the PARTICIPANT. WORK SITE will ensure that no PARTICIPANT exceeds 120 hours total. This number cannot exceed 1000 hours per PARTICIPANT per year unless classified as a Student Assistant with CUSTOMER and FOUNDATION approval.

- 3.3 WORK SITE certifies that it provides a drug-free workplace, required by the California Drug-Free Workplace Act of 1990 (Government Code section 8350 et seq.).
- 3.3 WORK SITE shall comply with all applicable federal, state and local laws and regulations to a safe and accessible work environment, including but not limited to, federal and state Occupational Safety and Health Administration (“OSHA”) laws and regulations, including the recording of workplace injuries on CUSTOMER’s OSHA 300 logs. WORK SITE agrees to provide PARTICIPANTS with new-hire safety orientation and regular safety training and meetings in accordance with Cal-OSHA for the WORK SITE’s industry.
- 3.4 WORK SITE shall comply with the requirements of the Fair Labor Standards Act, the California Labor Code, the California Industrial Wage Orders, Title VII of the Civil Rights Act of 1964, the Fair Employment and Housing Act, the Hatch Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, Workforce Innovation and Opportunity Act (“WIOA”), and all other federal, state, and local laws and regulations governing the hiring or employment of PARTICIPANT.
- 3.4.1 If the regulations promulgated pursuant to WIOA are amended or revised, it shall comply with them or will notify CUSTOMER within 30 days after promulgation of the amendments or revision that it cannot so conform.
- 3.5 WORK SITE shall ensure that PARTICIPANTS under the age of 21 will not have access to, distribute, sell, serve, or come in contact with alcohol or tobacco products. For those individuals over age 21, the WORK SITE shall ensure the individual receives proper training for selling, pouring, distributing alcohol and tobacco products. Violation of this policy will result in termination of the WORK SITE agreement.
- 3.6 WORK SITE shall not participate in the Career Catalyst/ SJ Works program if experiencing abnormal labor conditions such as strikes, lockouts, or layoffs and the work experience PARTICIPANT will dislocate or affect employment or promotional opportunities for the WORK SITE's current or laid-off employees.
- 3.7 WORK SITE and/or the PARTICIPANT shall not be involved in training activities, which assist, promote, or deter union organization.
- 3.8 PARTICIPANT shall not be employed on the construction, operation, or maintenance of any facility as is used or to be used for sectarian instruction, or as a place for religious worship.
- 3.9 WORK SITE management shall inform CUSTOMER immediately if they become aware that there is an employee or other person at the WORK SITE that PARTICIPANT may come into contact with that is listed as a Registered Sex Offender.
- 3.10 WORK SITE and CUSTOMER agree to the retention of all required records, as per 29 CFR 95.53, for no less than 3 years following the completion of this agreement.

#### **4. Term, Termination, Waiver, and Modification**

- 4.1** The period of this Agreement is from the Date of Execution – June 30, 2023 (“Term”).

4.2 CUSTOMER may, in its sole discretion, terminate this Agreement at any time, for any reason, without penalty, and require the removal of the PARTICIPANT from the WORK SITE if determined to be in the PARTICIPANT's or CUSTOMER's best interest. The WORK SITE may terminate this Agreement for any reason, without penalty, upon 15 days written notice to CUSTOMER.

4.3 No modification or waiver of any provisions of this Agreement or its attachments shall be effective unless such waiver or modification shall be in writing, signed by all parties, and then shall be effective only for the period and on the condition, and for the specific instance for which given

## 5. **Worker's Compensation and Employment Claims**

5.1 WORK SITE shall immediately notify CUSTOMER and FOUNDATION of any injury and/or Workers' Compensation Claims related to a PARTICIPANT.

5.2 WORK SITE shall promptly report to CUSTOMER and FOUNDATION any claims of harassment, discrimination, and/or claims of any violation of law governing the PARTICIPANT's employment, including allegations or reports of any irregularities or discrepancies by PARTICIPANT.

5.3 WORK SITE not place PARTICIPANT in any position involving use of motor vehicles or heavy equipment..

## 6. **Insurance and Indemnification**

6.1 WORK SITE shall maintain insurance as listed below:

- i. Comprehensive commercial general liability, property loss, and personal injury insurance with a combined single limit of no less than one million dollars (\$1,000,000.00) per occurrence; The Commercial General Liability Policy shall name CUSTOMER and Foundation for California Community Colleges, its directors, officers, and employees as Additional Insureds.
- ii. Workers' compensation as required under the Workers' Compensation and Safety Act of the State of California, as amended from time to time for WORK SITE's employees only (not PARTICIPANTS).

6.2 The WORK SITE shall indemnify and hold harmless CUSTOMER, its elected and appointed councils, boards, commissions, officers, agents, and employees from any liability, including attorneys' fees, for damage or claims for damage for any economic loss or personal injury, including death, as well as for property damage, to the extent caused by intentional or negligent acts or omissions in the performance of services rendered under this Agreement.

6.3 WORK SITE shall be liable for and shall indemnify, defend and hold both CUSTOMER and the Foundation for California Community Colleges harmless against any costs, expenses, claims, suits, judgments, loss or damage (including reasonable attorneys' fees) arising from any and all wage and hour violations or breach of any labor and employment laws brought by a PARTICIPANT due to the fault, willful misconduct, or negligence of the WORK SITE.

### **MONITORING, EVALUATION AND REPORTING REQUIREMENTS**

**1. Records, Reports and Audits of Contractor:**

1. Establishment and Maintenance of Records. Contractor shall maintain records, including but not limited to, books, financial records, supporting documents, statistical records, personnel, property, and all other pertinent records sufficient to reflect properly all matters covered by this Agreement. Such records shall be maintained in accordance with requirements now or hereafter prescribed by the City.

2. Preservation of Records. Contractor shall preserve and make available its records:

- a. for the period of five (5) years from the expiration date of this Agreement; or
- b. for such longer period, if any, as may be required by applicable law; or
- c. if this Agreement is completely or partially terminated, for a period of five (5) years from the date of any resulting final settlement.

3. Examination of Records and Facilities. At any time during normal business hours, upon advance written notice and as often as may be deemed necessary, Contractor agrees that City, and/or any of its respective authorized representatives shall have access to and the right to examine any of its plants, offices and/or facilities engaged in performance of this Agreement and all its records with respect to all matters covered by this Agreement. Contractor also agrees that the City, or any of its authorized representatives shall have the right to audit, examine, and make excerpts or transcripts of and from such records, and to make audits of all contracts and subcontracts, invoices, payrolls, records of personnel, conditions of employment, materials, and all other data relating to matters covered by this Agreement. City may examine records or facilities pursuant to this Section throughout the term of this Agreement and

- a. for a period of five (5) years after final payment under this Agreement; or,
- b. for such longer period as may be required by applicable law; or
- c. if this Agreement is completely or partially terminated, for a period of five (5) years from the date of any resulting settlement.

4. City Audits. The City may perform an independent audit. Such audits may cover programmatic as well as fiscal matters. Contractor will be afforded an opportunity to respond to any audit findings, and have the responses included in the final audit report. Costs of such audits will be borne by the City.

## 2. **Monitoring and Evaluation**

Contractor agrees to cooperate with City on the implementation, monitoring and evaluation of this Program and to comply with any and all reporting, data collection, and evaluation requirements established by City, including but not limited to; submission of reports as outlined in this Agreement.

1. **Site Visits:** Contractor shall cooperate with visits from the City or its Evaluation Consultants, for the purpose of verifying the implementation of projects, interviewing staff, and/or verifying supporting documentation.
2. **Data Collection:** Contractor agrees to perform ongoing data collection and sharing in accordance with City process to ensure effective service delivery in compliance with this Agreement.

**The following Attachment must be included in the Worksite Agreement ONLY IF MINORS ARE EMPLOYED:**

### **Attachment A to EXHIBIT F**

#### **EMPLOYEE/VOLUNTEER CLEARANCE VERIFICATION AND COMPLIANCE WITH THE CHILD ABUSE AND NEGLECT REPORTING ACT**

If Contractor provides services involving minors, and as a City-approved method of complying with the provisions contained in this Agreement, Contractor shall conduct a criminal background check through the database of the California Department of Justice and an FBI criminal database or equivalent national database as approved in writing by Contractor's liability insurance provider, on each of its employees and volunteers who have supervisory or disciplinary authority over minors.

Contractor shall also comply with the provisions of the Child Abuse and Neglect Reporting Act, California Penal Code Section 11164 *et. seq.* Additionally, Contractor certifies the following:

1. Any and all personnel employed or retained by Contractor in conducting the operations of Contractor's program shall be qualified to perform the duties assigned to them by Contractor. Contractor agrees that Contractor shall not at any time allow its employees or volunteers to be in any position with supervisory or disciplinary authority over minors, if they have been convicted of any offense identified in California Public Resources Code Section 5164. (Copy attached.)

City and Contractor understand that results of background checks on minors may be confidential under state law. Therefore, all employees or volunteers must be at least 18 years of age if they are

to be in a position having supervisory or disciplinary authority over any minor.

If Contractor intends to have employees or volunteers under the age of 18 providing services under this Agreement, Contractor must obtain City's prior consent, and Contractor shall ensure that none of its employees or volunteers under 18 years of age have any supervisory or disciplinary authority over any minor, as such term is used in California Public Resources Code Section 5164.

2. Contractor shall be responsible for ensuring that no person who has supervisory or disciplinary authority over minors, who is paid or unpaid by Contractor, shall be permitted to provide services unless appropriate background checks, including fingerprints, have been performed prior to the beginning of services under this Agreement, and the person meets the standards set forth above. If requested by City, and to the extent allowed by law, Contractor shall promptly provide documentation listing each person that has provided or is providing services hereunder involving supervision or disciplinary authority over minors, and certifying that the Contractor has conducted the proper background check on such person or persons, and each of the named persons is legally permitted to perform the services described in this Agreement. Regardless of whether such documentation is requested or delivered by Contractor, Contractor shall be solely responsible for compliance with the provisions of this section.
  
3. That no person paid or unpaid by Contractor shall be permitted to provide services requiring contact with children or providing food concessionaire services or other licensed concessionaire services in that area, unless Contractor has complied with the TB testing requirements set forth in Section 5163 of the California Public Resources Code (copy attached), verifying that the person or persons has provided evidence/verification of a negative TB skin test reading less than two (2) years old (if newly hired) or within four (4) years (if current employee) of the date of execution of this Agreement and every four (4) years thereafter, if the term of this Agreement exceeds four (4) years.

For persons with a positive TB skin test reading, a physician's medical clearance must be obtained prior to services being provided as specified above. Contractor shall keep on file each "Certificate" of clearance for the persons described above, and shall also make available a copy of each Certificate to City, if requested and allowed by law. "Certificate" means a document signed by a licensed examining physician and surgeon or a notice from a public health agency or unit of the tuberculosis association which indicates freedom from active tuberculosis.

4. Contractor understands that if services are rendered on a school site, there may be additional requirements that may apply including without limitation, requirements under the California Education Code. Contractor acknowledges that it is Contractor's sole responsibility to comply with all applicable laws, regulations and licensing requirements in Contractor's provision of services hereunder.



I, the Contractor by signing below verify that I have read and agree to the above:



Email: rhonda@ourcityforest.org

\_\_\_\_\_  
Signature/Title

\_\_\_\_\_  
Date

**7. Notices**

7.1 All notices and other communications required or permitted to be given under this agreement, including but not limited to any notice of change of address, must be directed to the following individuals:

CUSTOMER:

Monique Melchor, Director  
City of San Jose, work2future Business and Administration Services  
5730 Chambertin Drive  
San Jose, CA 95118  
(408) 794-1108  
monique.melchor@sanjoseca.gov

WORK SITE:

Rhonda Berry, CEO/President  
Our City Forest  
646 N. King Road  
San Jose, CA 95133  
408-998-7337  
Rhonda@ourcityforest.org

FOUNDATION

Workforce Development  
Foundation for California Community Colleges  
1102 Q Street, Suite 4800  
Sacramento, CA 95811  
916-498-6723  
careercatalyst@foundationccc.org



The parties each represent and warrant that the signatories below are authorized to sign this agreement on behalf of themselves or the party on whose behalf they execute this agreement.

THE PARTIES HEREBY EXECUTE THIS AGREEMENT with their signature below.



Email: rhonda@ourcityforest.org

**City Attorney's Signature Block:**



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

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



Email: sarah.zarate@sanjoseca.gov

## **ATTACHMENT A to Work Site Agreement**

### **TRAINING OUTLINE:**

Job Site Name: Our City Forest

Total Weeks / Hours: 5 Weeks / up to 100 hours

Total hours authorized per week: 20

Hourly compensation: \$ 16.50

Job Site contact person & phone number: Sean Guess 408.998.7337

Scheduled date of completion: August 13, 2022

### **SPECIFICS SKILLS TRAINING OUTLINE:**

Under the supervision of nursery plant manager interns will perform pruning, regular watering, and rotation of plants in optimum sun/shade locations as required; Assist with delivery of plants to the nursery; Verify shipment documents for unloading; Practice proper lifting techniques; General labor duties include filing pots, planting seeds and seedlings, pruning shrubs; Regularly inspect plants;

### **CORE SKILL COMPETENCIES/INDICATORS:**

No experience necessary, just a willingness to work with others while enjoying the outside! Great opportunity to gain hands-on nursery and landscape experience while supporting a good cause!

### **JOB TITLE AND DETAILED DESCRIPTION:**

Plant Nursery Intern: Help maintain and grow trees and shrubs in the OCF Community Nursery! Ongoing help is needed for various tasks such as transplanting trees & shrubs, cultivating seedlings, watering, removing invasive species, pruning, moving and staking trees, labeling plants, filling mulch buckets, and propagating plants in the greenhouse. No experience necessary, just a willingness to work with others while enjoying the outside! Great opportunity to gain hands-on nursery and landscape experience while supporting a good cause!