

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF SAN JOSE AND
FOOTHILL DE ANZA COMMUNITY COLLEGE DISTRICT**

This Memorandum of Understanding ("Agreement") is made and entered into this 3rd day of November, 2022 by and between the CITY OF SAN JOSE, a municipal corporation ("City") and FOOTHILL DE ANZA COMMUNITY COLLEGE DISTRICT on behalf of FOOTHILL COLLEGE ("FHDA") in support of its **Veterinary Technology Student Internship Program**. City and FHDA may be referred to herein individually as "Party" or collectively as "Parties."

RECITALS

WHEREAS, Foothill College is an educational institution seeking to provide work experience for its students who are studying to become Registered Veterinary Technicians to enhance the College's curriculum in veterinary technical services; and

WHEREAS, City owns and operates the San José Animal Care Center, and desires to collaborate with Foothill College in a manner that would be mutually beneficial to the College, its students, City, and shelter animals;

NOW, THEREFORE, the Parties hereby agree as follows:

SECTION 1. TERM OF AGREEMENT.

The term of this Agreement shall be from October 1, 2022 through Sept 30, 2027, subject to the provisions of Section 12 of this Agreement.

SECTION 2. GENERAL CONDITIONS.

- A. City understands and agrees that FHDA will not be required to operate any motor vehicles or heavy equipment as part of the work assignment or training.
- B. City understands and agrees that FHDA will not be asked to engage in fundraising efforts such as proposal writing, financial campaigns, endowment drives, solicitation of gift, or similar activities for the sole purpose of raising general operating capital.
- C. FHDA shall be responsible for the student intern's reimbursements, if any, during the term of this Agreement.
- D. FHDA understands and agrees that City assumes no obligation to compensate the student intern. It is understood and agreed that the student intern is not an employee and shall obtain no rights to retirement benefits or other benefits which accrue to City employees unless City, at its sole discretion, offers employment in exchange for compensation to the student intern.
 - I. *Unpaid Student Internships:* There shall not be any compensation of any nature for the student's activities at the internship site, and they are not entitled to any benefits accruing to employees of the City. FHDA faculty and unpaid students who may become injured or ill while participating in the internship are not employees of the City and are not entitled to workers' compensation benefits, disability, or any other similar payment for such injuries from the City.
 - II. *Paid Student Internships:* FHDA encourages paid internships. City reserves the right to offer employment to student interns in exchange for compensation during the training period. Student interns who receive compensation or remuneration during their internship shall be entitled to the City employee benefits (e.g. workers' compensation, health or retirement benefits) for services performed by them and shall be deemed to be employees or agents of City.

- E. City is accepting the student intern as a volunteer who will perform services at the San José Animal Care Center without compensation from the City, unless otherwise determined at the sole discretion of City. It is also understood and agreed that each student intern shall be required to sign the City's Volunteer Code of Ethics Agreement (EXHIBIT A).
- F. City, at its option, shall be able to interview and approve the student intern prior to assignment at the San José Animal Care Center.
- G. City will allow FHDA to monitor visits and review records which are directly related to the student intern's work at the San Jose Animal Care Center.

SECTION 3. RESPONSIBILITIES OF FHDA.

FHDA agrees as follows:

- A. FHDA will screen and refer qualified students for placement with the San José Animal Care Center.
- B. The student intern will be a volunteer of the City. FHDA will provide worker's compensation insurance for any and all student interns assigned to the San José Animal Care Center.
- C. FHDA will conduct training for City worksite supervisors on the following topics: FHDA internship program procedures, student intern evaluation process and conclusions, reporting and other paperwork requirements, including workers compensation procedures.
- D. FHDA will conduct a training for student interns on the following topics prior to assignment to the San José Animal Care Center:
 - a. Employee Rights, if applicable
 - b. Workplace Harassment
 - c. Good workplace etiquette and practices
 - d. Pay stubs/tax information, if applicable
 - e. Safety training, reporting, and personal protective equipment as required by FHDA and City.
- E. FHDA will comply with the Insurance requirements set forth in the attached EXHIBIT B, entitled "Insurance." 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") as to form and content. These requirements are subject to amendment or waiver if so approved, in writing, by the Risk Manager.
- F. FHDA agrees to provide City with a copy of said insurance policies, certificates, and/or endorsements upon execution of this Agreement as a condition of the City accepting the student intern for placement at the San José Animal Care Center.

SECTION 4. RESPONSIBILITIES OF CITY.

CITY agrees as follows:

- A. To assign each student intern to a position in the San José Animal Care Center.
- B. To designate a City staff member to serve as liaison with FHDA.
- C. To designate a City staff member to provide close supervision of each student intern at the San José Animal Care Center. FHDA will provide any and all materials needed to perform duties required by City.
- D. To be able to conduct background checks through LiveScan for student interns assigned to the San José Animal Care Center.

- E. To be responsible for providing orientation and training necessary for the student intern to perform the assignments within San José Animal Care Center including instruction and/or hands-on experience.
- F. To provide release time for student interns to attend classes or workshops sponsored by FHDA.
- G. To provide written evaluations of the student intern's progress to FHDA at mid-term and the end of each internship placement, or as specified by FHDA.

SECTION 5. COMPLIANCE WITH LAW.

The Parties shall comply with all applicable laws and regulations of the federal, state and local governments.

SECTION 6. NONDISCRIMINATION.

The Parties shall not discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, marital status, 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 7. INDEMNIFICATION

FHDA shall indemnify and hold harmless City, its officers and employees against any claim, loss, or liability arising out of or resulting in any way from FHDA's performance under this Agreement. The City's acceptance of placement of the student intern shall not operate as a waiver of City's right to indemnification.

SECTION 8. INDEPENDENT CONTRACTOR.

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

SECTION 9. ASSIGNABILITY.

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

SECTION 10. WAIVER

FHDA 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 FHDA student interns shall not be deemed to be a waiver of any term or condition of this Agreement.

SECTION 11. FHDA BOOKS AND RECORDS.

FHDA 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. FHDA shall make such records and documents available for inspection and/or audit, at any time during regular business hours, upon written request by the City Auditor, the City Manager, the City Attorney, or City's Director of Public Works. Unless otherwise agreed by FHDA and City, such records and documents shall be made available at FHDA's address of record indicated in Section 13 of this Agreement.

SECTION 12. TERMINATION.

- A. Either Party shall have the right to terminate this Agreement, without cause, by giving not less than thirty (30) days written notice of termination.
- B. If FHDA fails to perform any of its obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice.
- C. The City Manager or designee is empowered to terminate this Agreement on behalf of City.

SECTION 13. 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:

CITY

Director
Animal Care Services Division
City of San José
2750 Monterey Road
San José, CA 95111

FHDA

Program Director – Foothill College
Veterinary Technology Internship Program
12345 El Monte Road
Los Altos, CA 94022-4599

Notice will be effective on the date personally delivered, or if mailed, notice will be effective three (3) days after deposit in mail. Changes of address of record of either Party shall be provided to the other Party, in writing, thirty (30) days prior to change.

SECTION 14. VENUE.

The Parties agree that venue shall be exclusively vested in the state courts of the State of California, 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 15. EXHIBITS.

The following exhibits are attached to this Agreement and are deemed a part of this Agreement:

- EXHIBIT A CITY'S VOLUNTEER CODE OF ETHICS AGREEMENT
- EXHIBIT B INSURANCE

SECTION 16. CALIFORNIA LAW

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California.

SECTION 17. ENTIRETY.

This Agreement, including all Exhibits attached hereto, represents the entire understanding of the Parties with respect to the 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 the matters in this Agreement. This Agreement may be modified only by a written amendment duly executed by the Parties to this Agreement

SECTION 18. 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 the day and year first hereinabove written.

“City”

APPROVED AS TO FORM:

Form Approved by the Office of the City

Attorney
Arlene Silva
Senior Deputy City Attorney

Sarah Zarate

Email: sarah.zarate@sanjoseca.gov
Date: 11/03/2022 GMT

Sarah Zarate
Director, Office of the City Manager
“FHDA”

FOOTHILL DE ANZA COMMUNITY COLLEGE DISTRICT on

Susan Chew 11/2/2022

Email: cheususan@fhda.edu
Date: 11/02/2022 GMT

Susan Chew

Shaelyn St. Onge-Cole RVT

Email: stonge-coleshaelyn@fhda.edu
Date: 10/18/2022 GMT

Shaelyn St. Onge-Cole,
Program Director, Veterinary Technology

EXHIBIT A

CITY'S VOLUNTEER CODE OF ETHICS AGREEMENT

Volunteer Service Agreement & Release Volunteer Code of Ethics

PERSONAL CONTACT INFORMATION

Name _____

Address _____ City _____ Zip _____

Phone _____ Email Address _____

Please check: Yes, I would like to receive emails concerning volunteer opportunities with the City of San José.

Emergency Contact/Relationship/Phone _____

Medical Background - Please note any physical or medical conditions that should be considered in your assignment.

I, _____, agree to volunteer my services to the CITY OF SAN JOSE ("City") and to comply with the City's volunteer Code of Ethics.

I understand that the City of San Jose may photograph or videotape the volunteer events or activity in which I am participating. I give my permission for the City to use photographs or videotape of me for the purpose of promoting the City of San José and its services/programs. I give my permission with the following understanding: No compensation of any kind will be paid to me at this time or in the future for the use of my likeness.

I also acknowledge and agree that my services are provided for the convenience of the City and may be terminated for any reason or for no reason and at any time by the City without prior notice or hearing. I, the undersigned, certify that the information stated on this agreement and release is true, complete and correct to the best of my knowledge and belief and is made in good faith. Any false statements made by me may be used as a basis of rejection for this application or termination of volunteer services.

This agreement shall remain in effect for the term previously described. Additional information may be provided on the attachments.

City of San Jose Volunteer Code of Ethics Agreement

Volunteers are an important asset of the City's workforce and make it possible for the City to deliver services to San José residents. As a volunteer, you represent the City of San José. As such, it is important that you adhere to the City's Volunteer Code of Ethics.

I, _____, as a volunteer with the City of San José agree to:

- Conduct myself in a professional manner; maintaining high standards of integrity and honesty.
- Treat all members of the public, employees, and other volunteers with respect and courtesy.
- Avoid any activity that could be seen as a conflict of interest, such as accepting gifts or favors from individuals or businesses that could be seen to be an attempt to influence a City decision.
- Respect confidential information that is available to me as a result of my volunteer work with the City, and refrain from using it for personal gain or for personal, non-City business related reasons.
- Bring any violation of this confidentiality to my supervisor.
- Promptly raise questions and concerns regarding possible violations of City policy or local, State or Federal law with my immediate supervisor or another manager within my department.
- Reinforce the City of San José's commitment to equal employment opportunity and a work environment free of discrimination and harassment, including sexual harassment. Please see Section 1.1.1., titled Discrimination and Harassment Policy, in the City Policy Manual.

I understand that I may be released from my volunteer position with the City of San José for not adhering to the above Code of Ethics.

EXHIBIT B

INSURANCE

FHDA, at FHDA'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 FHDA, 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. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance and for all Interns placed on City properties.

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. FHDA 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 General 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. 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.

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 FHDA 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 Coverage
 - 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, FHDA; products and completed operations of FHDA; and premises owned, leased or used by FHDA. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees, agents and contractors.
 - b. FHDA'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 FHDA's insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies by FHDA shall not affect coverage provided City, its officers, employees, agents, or contractors. Coverage shall state that FHDA'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. Coverage shall contain waiver of subrogation in favor of the City of San Jose, 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 Jose, its officers, employees, agents and contractors.

3. All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, 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 non-payment of premium.

E. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to City's Risk Manager.

F. Verification of Coverage

FHDA 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 email or postal address as may be directed in writing by the Risk Manager):

City of San José
Risk Management, Department of Finance
200 East Santa Clara St., 14th Floor
San José, CA 95113-1905

G. Subcontractors

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