

[3/1/23]

**CITY OF SAN JOSE
AGREEMENT**

SUMMARY PAGE

This GRANT AGREEMENT is entered into this 3rd day of March, 2023, by the **CITY OF SAN JOSE** (“CITY”), a municipal corporation, and **Prosperity Labs** (“GRANTEE”).

Department:	Office of Economic Development & Cultural Affairs (OEDCA)	
Dept. Contract No.:	CAO Document No.:	
WebGrants ID:		

Agency: OEDCA

Project: Mesa Redonda

Description: GRANTEE will administer a one-year pilot program. The program will entail recruiting 20 Spanish speaking entrepreneurs in the pre-venture phase and training them with basic business skills such as marketing, business scalability, operational efficiency, and tax preparation, and food safety management skills. All training will be conducted in Spanish.

City funds will primarily cover fees associated with renting commercial kitchens and associated costs, business and health/safety permitting fees, and food safety training materials. Prosperity Lab is utilizing matching funds from a private agency to pay for trainer fees and individual technical assistance.

Funding Source: General Fund

Contract Amount Not to Exceed: \$ 60,000

Payment Terms: See Exhibit C

Agreement Term: Start Date: Upon Execution End Date: 12/31/2023

PARTIES TO AGREEMENT:

	GRANTEE	CITY OF SAN JOSE
Agency Name:	The Prosperity Lab	OEDCA
Address for Legal Notice:	2150 N First St. Suite 436	200 East Santa Clara Street, 17 th Floor
City/State/Zip Code:	San Jose, CA 95131	San José, CA 95113

[3/1/23]

Attention:	Mimi Hernandez	Nanci Klein
E-mail Address:	mimi@prosperitylab.org	
Telephone No.:	(408) 547-3190	
Federal Taxpayer ID	85-0495873	
City Business License/ Tax No.:		
Type of Entity:	501 (c)(3) – non-profit corporation A California nonprofit	
State of Incorporation or Residency:	California	

CONTACT INFORMATION

GRANTEE Contact Person:	Mimi Hernandez
Title:	Executive Director
Telephone No:	(408) 547-3190
Email:	mimi@prosperitylab.org

CITY Contact Person:	Jonathan Munoz
Title:	Senior Executive Analyst
Telephone No:	(408) 535-8174
Email:	jonathan.munoz@sanjoseca.gov

EXHIBIT LIST

- | | | |
|-------------------------------------|--------------------------|--|
| YES | N/A | |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Exhibit A: Scope of Services |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Exhibit B: Budget Summary |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Exhibit C: Payments to GRANTEE and Reporting Schedule |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Exhibit D: Monitoring, Evaluation, and Reporting Requirements |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Exhibit E: General Service Requirements (Special Grant Conditions) |
- To the extent applicable, the following grant provisions are required for this AGREEMENT. (Check all provisions that apply.)

- | | | | |
|-------------------------------------|-------------------------------------|-----------------------------------|-------------------------------------|
| YES | N/A | | |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | City of San José Funding | <input checked="" type="checkbox"/> |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Federal | |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | State | |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | County | |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Other Public Agency | |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Private Funding Agency | |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Exhibit F: Insurance Requirements | |

[3/1/23]

**CITY OF SAN JOSE
GRANT AGREEMENT**

This AGREEMENT is made by and between the CITY OF SAN JOSE, a municipal corporation of the State of California ("CITY"), and the person or entity identified as GRANTEE on Page 1 of the Summary Pages at the beginning of this AGREEMENT ("GRANTEE").

THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1: RECITALS

WHEREAS, on June 7, 2022, Mayor Sam Liccardo, in his Fiscal Year 2022-2023 June Budget Message, proposed granting \$60,000 to The Prosperity Lab to administer the Mesa Redonda program; and

WHEREAS, on June 14, 2022, the City Council approved the Mayor's June Budget Message for Fiscal Year 2022-2023 and adopted a resolution authorizing the City Manager to negotiate and execute agreements addressed in the Mayor's Budget Message; and

WHEREAS, CITY desires to obtain services to help GRANTEE lead local street vendors and aspiring restaurateurs through a comprehensive training program; and
WHEREAS, GRANTEE has the necessary professional expertise and skill to perform such services.

NOW, THEREFORE, the purpose of this AGREEMENT is to retain GRANTEE to perform those services specified in **EXHIBIT A** of this AGREEMENT.

SECTION 2: PROGRAM COORDINATION

- A. **CITY:** The Director of the Department identified on the Summary Pages under City of San José (hereinafter "DIRECTOR"), or his or her designee, shall be the CITY official responsible for the program and shall render overall supervision of the progress and performance of this AGREEMENT by CITY. All services agreed to be performed by CITY shall be under the overall direction of the DIRECTOR.
- B. **GRANTEE:** GRANTEE shall identify a single project director who shall have overall responsibility for the progress and execution of this AGREEMENT (GRANTEE Project Director). Additionally, GRANTEE shall immediately notify CITY in writing should circumstances or conditions subsequent to the execution of this AGREEMENT require a substitute GRANTEE Project Director. GRANTEE's Project Director and GRANTEE's staff will fully cooperate with the DIRECTOR relating to the work or services provided hereunder.

SECTION 3: TERM OF AGREEMENT AND GRANT AWARD

- A. The term of this AGREEMENT shall commence on the Start Date as set forth in the Summary Pages and shall expire on the End Date as set forth in the Summary Pages unless extended or sooner terminated in accordance with the terms of this AGREEMENT. Regardless of the date of execution of this AGREEMENT, this AGREEMENT is effective as of the Start Date.

[3/1/23]

- B. If GRANTEE wishes to extend this AGREEMENT, a request to extend this AGREEMENT along with a Revised Scope of Services (**EXHIBIT A**), if necessary, should be submitted by GRANTEE to the CITY no less than forty-five (45) days prior to the end date. An extension must be set forth in a written amendment to this AGREEMENT, signed by authorized representatives of CITY and GRANTEE. Nothing herein commits or binds the CITY to extend this AGREEMENT which shall be at the sole discretion of CITY, and if additional funds are required, shall be subject to appropriation of funds by City Council.

SECTION 4: GRANT SERVICES

GRANTEE shall perform those services as specified in detail on **EXHIBIT A** entitled "Scope of Services," ("Grant Services") and shall comply with the terms and conditions of this AGREEMENT.

SECTION 5: PAYMENTS

- A. CITY agrees to pay GRANTEE an amount not to exceed the amount set forth on the Summary Pages ("Grant Award"), for the services described in **EXHIBIT A** entitled "Scope of Services", and which payment is subject to the terms and conditions set forth in **EXHIBITS B and C** entitled "Budget Summary" and "Payments to GRANTEE and Reporting Schedule." Any costs incurred by GRANTEE above the Grant Award shall be at GRANTEE's sole cost and expense.
- B. CITY will not pay for unauthorized services rendered by GRANTEE or for claimed services which GRANTEE has not provided as required by this AGREEMENT.
- C. Pursuant to Section 16 below, neither CITY nor GRANTEE shall make any payments in violation of any law existing during the term of this Agreement including, but not limited to, any maximum amount of administrative fee(s). In the event any such payments are made by the CITY, GRANTEE will refund to CITY any such payments which were made in violation of law.
- D. GRANTEE shall comply with all of the terms and conditions of this AGREEMENT, including the SUMMARY PAGE and all Exhibits and Certifications attached hereto. If GRANTEE fails to comply with any of the terms and conditions of this AGREEMENT, including the SUMMARY PAGE and all Exhibits and Certifications attached hereto, GRANTEE shall reimburse CITY from sources other than those received from CITY.
- E. CITY shall pay GRANTEE for expenditures claimed to be allowable within forty-five (45) days after timely receipt of GRANTEE's properly completed and documented invoice, or as soon thereafter as is reasonable, provided GRANTEE complies with all terms and conditions of this AGREEMENT. No such payment shall mean or imply that CITY has made a final determination that an expenditure(s) by GRANTEE is allowable; nor shall any such payment waive or otherwise limit the rights of federal, state or CITY representatives to review GRANTEE's records and recover from GRANTEE payments which are not allowable.
- F. Director or designee may, without prior notice to GRANTEE, at any time in his or her absolute discretion, elect to suspend or terminate payment to GRANTEE, in whole or in part, terminate work or expenditures by GRANTEE, under this AGREEMENT, or not to make any

[3/1/23]

particular payment under this AGREEMENT or take any other action available in the event of any of the following occurrences:

1. If GRANTEE (with or without knowledge) shall have made any material misrepresentation of any nature with respect to any information or statements furnished to CITY in connection with this AGREEMENT;
2. If there is pending litigation with respect to the performance by GRANTEE of any of its duties or obligations under this AGREEMENT which may materially jeopardize or adversely affect the undertaking of or the carrying out of the Grant Services;
3. If GRANTEE, without having obtained CITY approval, has taken any action pertaining to the Grant Services which requires CITY approval;
4. If GRANTEE makes improper use of the Grant Award;
5. If GRANTEE fails to comply with any of the terms and conditions of this AGREEMENT including without limitation, GRANTEE's failure to carry out the Grant Services or other obligations as described in any Exhibit to this AGREEMENT.
6. If GRANTEE submits to CITY any report which is incorrect or incomplete in any material respect, or is untimely.

SECTION 6: DEFAULT AND TERMINATION OF AGREEMENT

- A. CITY may, through CITY's Director, terminate this AGREEMENT without cause by giving GRANTEE thirty (30) calendar days' written notice.
- B. Each of GRANTEE's obligations under this AGREEMENT shall be deemed material. If GRANTEE fails to perform any of its obligations under this AGREEMENT, or any other AGREEMENT with the CITY, CITY may terminate this AGREEMENT upon ten (10) days advance notice ("Notice Period") to GRANTEE, specifying GRANTEE's breach and providing GRANTEE with the opportunity to cure the specified breach within the Notice Period or in those instances where the specified breach cannot reasonably be cured within the Notice Period, the opportunity to commence to cure the specified breach. In the event GRANTEE fails to cure or to commence to cure the specified breach within the Notice Period, this AGREEMENT shall be terminated. Without limiting the generality of the foregoing, the occurrence of any one of the following events shall constitute a default of this AGREEMENT for which CITY may exercise its right of termination:
 1. GRANTEE's breach of any of the representations or warranties contained in this AGREEMENT;
 2. The occurrence of any of the events set forth in SECTION 5 for suspension or termination of CITY's payment of the Grant Award.
- C. In the event of termination under this SECTION, GRANTEE shall have the following obligations:
 1. No later than thirty (30) days following the date of termination GRANTEE shall refund to CITY any unused portion of the Grant Award, except that GRANTEE

[3/1/23]

shall have no obligation to refund to CITY any portion of the Grant Award that was distributed in accordance with the terms of the AGREEMENT. GRANTEE shall also provide CITY with a written report detailing the expenditures, if any, from the Grant Award, including an accounting of its administrative expenses to the date of termination. GRANTEE shall refund to CITY any portion of the Grant Award designated for GRANTEE's administrative expenses which was not expended as of the date of termination. Nothing in this AGREEMENT shall be deemed to be a waiver of CITY's right to recover from GRANTEE any portion of the Grant Award that has not been spent in accordance with this AGREEMENT. Upon receipt, GRANTEE will be paid for services performed and reimbursable expenses incurred in compliance with the terms of this AGREEMENT to date of termination, unless other payment terms are explicitly provided in **EXHIBIT C**.

2. Upon termination, GRANTEE shall immediately deliver to CITY any and all copies of materials developed for this grant including, but not limited to, all data collection forms, reports, studies and other work performed, whether or not completed by GRANTEE or GRANTEE's subgrantee, if any, under this AGREEMENT. GRANTEE shall not be required to deliver any proprietary or copyrighted material purchased or created by GRANTEE or GRANTEE's subgrantee prior to this grant.
- D. Nothing in this AGREEMENT shall be construed so as to deprive CITY of its rights and remedies at law or in equity against GRANTEE.
- E. CITY's Director is authorized to terminate this AGREEMENT on CITY's behalf.
- F. CITY may, at its sole option, pursue a course correction process with GRANTEE to address issues with GRANTEE's performance under this AGREEMENT. However, CITY is under no obligation to pursue a course correction prior to exercising its rights to suspend payment to GRANTEE or to terminate this AGREEMENT.

SECTION 7: SUBJECT TO FUNDING

If the term of this AGREEMENT is more than one year, the funding in any year after the first year may be contingent upon past and pending performance as well as future appropriation by the City Council of the City of San José, in its sole discretion. If the funding required to pay for Grant Services for the next fiscal year has not been appropriated by June 30 of any year, this AGREEMENT will automatically terminate, effective June 30.

SECTION 8: ACCOUNTING AND FINANCIAL RECORDS.

GRANTEE shall establish and maintain at all times, on a current basis in connection with the provision of Program, an adequate accounting system in accordance with generally accepted accounting principles and standards and acceptable to DIRECTOR covering all revenues, costs, and expenditures with respect to GRANTEE's performance under this AGREEMENT.

SECTION 9: REPORTING REQUIREMENTS.

GRANTEE shall submit reports of all financial transactions related to GRANTEE's performance under this AGREEMENT ("Financial Reports") prepared in accordance with **EXHIBIT D** and, to

[3/1/23]

the extent applicable, on the schedule specified in **EXHIBIT C**. The format of the Financial Reports shall be as provided in this AGREEMENT unless otherwise directed by the DIRECTOR. A final report shall be delivered to CITY prior to expiration of this AGREEMENT, as may be further described in **EXHIBIT D**. In lieu of generating a consolidated quarterly report, the GRANTEE may instead submit, in strict accordance with the above schedule, a report covering each of the months in the reporting period, which includes a Standard Balance Sheet and Standard Income and Expense Statement for each of the months in the reporting period. The Financial Reports must be prepared in accordance with generally accepted accounting principles.

SECTION 10: RIGHT OF EXAMINATION AND AUDIT AND PRESERVATION OF RECORDS.

GRANTEE agrees that the CITY's Manager, Auditor, Attorney or the Director, or any of their duly authorized representatives, shall have access to and the right to examine all facilities and activities of GRANTEE related to GRANTEE's performance of this AGREEMENT, including the right to audit, conduct further financial review, examine and make excerpts or transcripts of all contracts, subcontracts, invoices, payroll records, personnel records, and all other data or financial records relating to matters covered by this AGREEMENT at any time during the term of this AGREEMENT. GRANTEE shall cooperate with the CITY in such audit, examination, or further review and shall provide CITY with access to GRANTEE's staff and to all relevant records, documents, and data, including but not limited to, management letters, board minutes, and payroll.

EXHIBIT D, "MONITORING, EVALUATION AND REPORTING REQUIREMENTS" sets forth standards regarding the CITY's right to audit, and GRANTEE's obligation to deliver to the CITY reports which may include audited financial reports. GRANTEE further agrees that GRANTEE shall preserve all records related to the performance of this AGREEMENT and that CITY's right to examine or audit the GRANTEE's records, facilities or activities shall continue for four (4) years after the expiration or termination of this AGREEMENT unless a longer period for CITY's audit or GRANTEE's record retention is specified in **EXHIBIT D** as is required by applicable law.

SECTION 11: CITY ACKNOWLEDGMENT

GRANTEE shall acknowledge the support of CITY, where appropriate, in written documents and informational materials regarding the Grant Program.

SECTION 12: INSURANCE

GRANTEE agrees to have the policies set forth in the attached **EXHIBIT F**, entitled "INSURANCE REQUIREMENTS" not later than the date of execution of this AGREEMENT and to maintain such policies throughout the term of this AGREEMENT. All policies, endorsements, certificates and/or binders shall be subject to approval by the Risk Manager of the City of San José as to form and content. These requirements may not be amended or waived unless approved in writing by the Risk Manager. GRANTEE agrees to provide CITY with a copy of said policies, certificates and/or endorsements upon execution of this AGREEMENT.

SECTION 13: INDEMNIFICATION AND HOLD HARMLESS

A. GRANTEE agrees to defend, indemnify and hold harmless the CITY from and against any and all claims, demands, causes of action, or liabilities incurred by CITY arising from, in

[3/1/23]

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

- B. The GRANTEE's obligations under this indemnification provision shall survive the expiration or termination of this AGREEMENT.

SECTION 14: NOTICES

- A. Any communication or notice which either party is required to send to the other party shall be in writing and shall be either personally delivered or mailed in the United States mail, postage prepaid, or by facsimile, or electronic mail, to the respective parties addressed as referenced on the Summary Page of this AGREEMENT.
- B. Either party may change its address by sending written notice of the new address to the other party pursuant to this SECTION.

SECTION 15: AMENDMENTS

Unless otherwise authorized by this AGREEMENT, amendments to the terms and conditions of this AGREEMENT and any such amendment to this AGREEMENT shall be effective only upon the mutual AGREEMENT in writing of the authorized representatives of the parties.

SECTION 16: COMPLIANCE WITH LAWS/NONDISCRIMINATION

- A. GRANTEE shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments and with applicable CITY policies.
- B. GRANTEE shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, actual or perceived gender identity, sexual orientation, disability, ethnicity or national origin in connection with or related to the performance of this AGREEMENT.
- C. GRANTEE will also obtain and maintain all licenses and permits appropriate to its proper and effective performance of this AGREEMENT prior to the date of commencement, including, but not limited to a City of San José business tax certificate or exemption, if applicable, with the CITY's Finance Department to operate in the CITY. GRANTEE is responsible for contacting the appropriate offices and filing the necessary documents to comply with these requirements.

SECTION 17: RELATIONSHIP OF PARTIES

- A. It is understood and agreed by and between the parties that GRANTEE in the performance of this AGREEMENT, shall not act nor is it at any time authorized to act, as the agent or representative of CITY in any matter. GRANTEE further agrees that it will not in any manner

[3/1/23]

hold itself out as the agent or representative of CITY or act in such a fashion as would give the impression to a reasonable person that GRANTEE is acting in such a capacity.

- B. The parties agree that GRANTEE and GRANTEE's employees shall be at all times independent contractors and not agents or employees of the CITY, and that GRANTEE and GRANTEE's employees shall not be entitled to any salary, fringe benefits, pension, Workers' Compensation, sick leave, insurance or any other benefit or right connected with employment by the City of San José, or any compensation other than as prescribed herein, and GRANTEE and GRANTEE's employees expressly waive any claim it/they may have to any such rights.
- C. Under no circumstances shall this AGREEMENT be construed as one of partnership, joint venture, or employment between GRANTEE and CITY. Each party acknowledges and agrees that it neither has, nor will give the appearance or impression of having, any legal authority to bind or commit the other party in any way.

SECTION 18: WAIVER

- A. In no event shall any payment by CITY or any acceptance of payment by GRANTEE hereunder constitute or be construed to be a waiver by CITY or GRANTEE of any breach of covenants or conditions of this AGREEMENT or any default which may then exist on the part of CITY or GRANTEE, and the making of any such payment or the acceptance of any such payment while any such breach or default exists, shall in no way impair or prejudice any right or remedy available to CITY or GRANTEE with respect to such breach or default.
- B. The waiver by any party to this AGREEMENT of a breach of any provision of this AGREEMENT shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of this AGREEMENT.

SECTION 19: CORPORATE AUTHORITY/AUTHORIZED REPRESENTATIVES

GRANTEE represents and warrants that it has the authority to enter into this AGREEMENT. GRANTEE further represents and warrants that its signatory to this AGREEMENT is authorized to execute this AGREEMENT on GRANTEE's behalf.

SECTION 20: INTEGRATED DOCUMENT

This AGREEMENT, including the Summary Pages, recitals and any Exhibits and appendices, are incorporated herein and embody the entire AGREEMENT between CITY and GRANTEE. No oral agreements or conversations with any officer, agent or employee of CITY shall affect or modify any of the terms or obligations contained in any documents comprising this AGREEMENT. Any such oral agreement shall be considered as unofficial information and in no way binding upon CITY.

SECTION 21: SEVERABILITY OF PROVISIONS

If any part of this AGREEMENT is for any reason found to be unenforceable by a court of competent jurisdiction, all other parts nevertheless remain enforceable. CITY and GRANTEE agree that to the extent that the exclusion of any unenforceable provisions from this AGREEMENT affect the purpose of this AGREEMENT, then the parties shall negotiate an

[3/1/23]

adjustment to this AGREEMENT in order to give full effect to the purpose of this AGREEMENT or either party may terminate this AGREEMENT. In the event of termination, the provisions of SECTION 6 as related to repayment of the Grant Award shall apply.

SECTION 22: VENUE

The parties agree that this AGREEMENT shall be governed and construed in accordance with the laws of the State of California. In the event that suit shall be brought by either party to this AGREEMENT, 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 23: CONFLICT OF INTEREST

GRANTEE shall comply with the applicable provisions of the Political Reform Act of 1974, as amended, relating to conflicts of interest (codified in California Government Code Section 87000, et seq.), with the conflict of interest provisions of Government Code Section 1090 et seq. and with the CITY's Code of Ethics, set forth in City Council Policy 0-15. GRANTEE shall promptly advise CITY of the facts and circumstances concerning any disclosure made to it or any information obtained by it relating to conflicts of interest.

SECTION 24: RELIGIOUS/POLITICAL ACTIVITIES

- A. GRANTEE shall not expend any portion of the funds provided under this AGREEMENT ("Grant Award") to inhibit or promote religion and the Grant Services funded by the Grant Award must not be used to convey a religious message. Any portion of the Grant Award used in contradiction to the provisions of this SECTION, shall be deemed a disallowed cost.
- B. GRANTEE shall not expend any portion of the Grant Award for political advocacy efforts, whether for or against a political candidate, ballot measure or bill.

SECTION 25: SUBCONTRACTS

- A. No subcontract will alter in any way any legal responsibility of GRANTEE to provide services under this AGREEMENT.
- B. GRANTEE will monitor the subcontractor to ensure compliance with the terms and conditions of this AGREEMENT and provide records of their compliance as requested.
- C. GRANTEE assures that the subcontractor(s) maintain(s) current licensure and indemnity insurance appropriate for obligations undertaken by subcontractor(s) and provides copies of such to CITY.
- D. GRANTEE will provide CITY with records of reimbursement to subcontractor(s) for obligations incurred under subcontract.
- E. CITY has the right to refuse reimbursement for obligations incurred under any subcontract that does not comply with the terms of this AGREEMENT.

SECTION 26: ASSIGNABILITY

[3/1/23]

The parties agree that the expertise and experience of GRANTEE are material considerations for this AGREEMENT. Unless specifically authorized by this AGREEMENT, GRANTEE may not assign the performance of any obligation or interest under this AGREEMENT, including subcontracting, without the prior written consent of CITY. Any attempt by GRANTEE to assign this AGREEMENT, in violation of this SECTION, will be voidable at CITY's sole option.

SECTION 27: EMPLOYEES/VOLUNTEERS

- A. Any and all personnel employed or volunteers retained by GRANTEE in conducting the operations of GRANTEE's program shall be qualified to perform the duties assigned to them by GRANTEE.
- B. GRANTEE shall not hire employees or volunteers who will have supervisory or disciplinary authority over minors who have been convicted of any offense identified in California Public Resources Code Section 5164. GRANTEE shall fully indemnify, defend, and hold harmless CITY for any such hiring. GRANTEE shall notify CITY in writing of any violation of this provision as soon as is reasonably practicable.
- C. GRANTEE shall also not employ any person who is permitted to provide services requiring contact with children or providing food concessionaire services or other licensed concessionaire services in that area, unless GRANTEE has complied with the TB testing requirements set forth in Section 5163 of the California Public Resources Code.
- D. Regardless of whether services have been provided prior to full execution of this AGREEMENT, GRANTEE certifies to the CITY that all services were provided in full compliance with the terms and provisions of this AGREEMENT.

SECTION 28: GRANTEE'S FINANCIALS.

- A. Any GRANTEE that receives \$270,000 or more in funds from the CITY in the aggregate during any fiscal year that is either (i) grant funding other than construction funding and/or (ii) operating subsidy funding for operation of CITY facilities, must prepare an annual audited financial statement. All audits are due to CITY within six (6) months from the end of the GRANTEE's fiscal year (which period may be extended by the City Manager based upon a showing of hardship or other good cause). Audits must be performed by a certified public accountant currently licensed to practice in the State of California, must conform to generally accepted auditing standards as specified in **EXHIBIT D**, and otherwise be in a form acceptable to the CITY.
- B. City Council requires that each non-profit organization receiving \$270,000 or more in funds from the CITY in the aggregate during any fiscal year which is either (i) grant funding other than construction funding and/or (ii) operating subsidy funding for operation of CITY facilities, must prepare and make available for public view on the Internet, annual audited financial statements. The audited financial statements must be made available for view within six months from the end of the non-profit's fiscal year (which period may be extended by the City Manager based upon a showing of hardship or other good cause) and must be viewable by the public at no cost. All audits must be performed by a certified public

[3/1/23]

accountant currently licensed to practice in the State of California, must conform to generally accepted auditing standards and otherwise be in a form acceptable to the CITY.

- C. Non-profits shall be required to comply with this requirement at the time that the non-profit has entered into one or more grant agreements or subsidy agreements with the CITY, which provide for the payment of an aggregate amount that equals or exceeds \$270,000 in grant and/or subsidy funds in any one fiscal year. Non-profits covered by this requirement must exert due diligence in determining when they have reached the aggregate funding threshold of \$270,000. The provisions of the financial posting requirements shall be interpreted broadly to effectuate the purpose of making available to the public information on recipients of substantial CITY funds. These provisions shall apply not only to grant agreements or operating agreements but shall also apply, without limitation, if any amendment to such agreements brings the total annual funding to equal or exceed \$270,000, and also to any other agreements with the CITY that are equivalent in purpose to a grant agreement or an operating subsidy agreement, regardless of the title of the agreement.
- D. This posting requirement shall remain in effect until an entire fiscal year passes in which the non-profit does not have contracts with the CITY which provide for grants and/or subsidies from the CITY in an aggregate amount equaling or exceeding \$270,000. Without limitation of any other remedy, GRANTEE's failure to comply with this requirement may be taken into consideration when evaluating GRANTEE's request for future grant funds or subsidies.
- E. Organizations receiving an aggregate amount of \$25,000 or more in funds from the CITY during any fiscal year which is either (i) grant funding other than construction funding and/or (ii) operating subsidy funding for operation of CITY facilities, must prepare and submit via the CITY's WebGrants grant management system, ("WebGrants"), a completed Financial Dashboard. CITY's project director will provide a Financial Dashboard template upon request. The Financial Dashboard must be submitted via WebGrants within six (6) months from the end of GRANTEE's Fiscal Year. This includes the previous Fiscal Year, if that year ended within six (6) months of the commencement of this AGREEMENT.

SECTION 29: ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY

- A. GRANTEE agrees that, in the performance of this AGREEMENT, GRANTEE 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/departments-offices/environmental-services/business-school-resources>
- B. Environmental procurement policies and activities related to the completion of work will include wherever practicable, but are not limited to:
1. 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.)
 2. Use of Energy Star Compliant equipment.
 3. Vehicles and vehicle operations (i.e. Alternative Fuel, Hybrid, etc.)
 4. Internal waste reduction and reuse protocol(s).

[3/1/23]

5. Water and resource conservation activities within facilities, including bans on individual serving bottled water and the use of compostable food service products, etc.

SECTION 30: GIFTS

- A. GRANTEE 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. GRANTEE 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 GRANTEE. 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 6 of this AGREEMENT.

SECTION 31: MISCELLANEOUS

- A. The headings of the sections and subsections of this AGREEMENT are inserted for convenience only.
- B. Where this AGREEMENT refers to CITY and no officer of the CITY is named, CITY's Manager shall have the authority to act on CITY's behalf.

EXHIBIT A
SCOPE OF SERVICES

GRANTEE will provide the services as described in this EXHIBIT.

A. Period of Service

The Grant Services will commence on **Upon Execution**, completing on **December 31, 2023**.

B. Target Population

The target audience is Spanish speaking local mobile food vendors and aspiring restaurateurs. Clients who want to become self-sufficient but say they cannot afford to use a commercial kitchen and associated fees.

GRANTEE will target Spanish speaking local mobile food vendors and aspiring restaurateurs (Hereinafter referred to as “Target Population”)

GRANTEE will collect and submit data documenting services to this target population.

C. Location of Services

- City of San Jose Community Center kitchen or Other adequate and compliant local facility, as designated by the City.
- Prosperity Lab 2150 N First Street 4th Floor San Jose, CA 95131
- Work2future Career Center 1608 Las Plumas Ave, San Jose, Ca 95133
- Almaden Community Center 6445 Camden Ave, San Jose, CA 95120

(Hereinafter referred to as “Service Locations”)

D. Description of Services

This grant is provided to Prosperity Lab-Mesa Redonda for a one-year pilot program. The program will entail recruiting 20 or more Spanish speaking entrepreneurs in the pre-venture phase and training them with basic business skills such as marketing, business scalability, operational efficiency, and tax preparation, and food safety management skills. All training will be conducted in Spanish.

EXHIBIT B
BUDGET SUMMARY

MESA REDONDA - BUDGET BREAKDOWN			
Kitchen Rental			
Payee	Description	Estimated Cost	
City of San Jose, Parks Recreation Neighborhood Services	Estimation From PRNS	\$ 31,200.00	
City of San Jose, Parks Recreation Neighborhood Services	Contingency	\$ 6,800.00	
Kitchen Rental Total Estimated Cost			\$ 38,000.00
Health Permits			
Payee	Description	Estimated Cost	
Santa Clara County Department of Environmental Health	Caterers Application	\$ 460.00	
Santa Clara County Sheriff's office	Livescan Fingerprinting	\$ 150.00	
San Jose Police Department	Peddler's Application	\$ 150.00	
To be determined	Other Fees/contingency	\$ 140.00	
	Per participant	\$ 900.00	
Health Permit total Estimated Cost (20 participants)			\$ 18,000.00
Training Material			
Payee	Description	Estimated Cost	
State food safety	Food Safety Training & exam	\$ 90.00	
To be determined	Manager Book, print material & supplies	\$ 90.00	
To be determined	Meat Thermometer	\$ 20.00	
	Per participant	\$ 200.00	
Training Material total cost			\$ 4,000.00

BUDGET NARRATIVE

City funds will primarily cover fees associated with renting commercial kitchens and associated costs, business and health/safety permitting fees, and food safety training materials. Prosperity Lab is utilizing matching funds from a private agency to pay for trainer fees and individual technical assistance.

EXHIBIT C
PAYMENTS TO GRANTEE AND REPORTING SCHEDULE

Payment shall be processed as set forth by the following schedule, subject to GRANTEE's satisfactory performance of this AGREEMENT. If the total amount shown on GRANTEE's invoice is less than the maximum installment amount set forth below, CITY shall pay GRANTEE the amount shown on the invoice.

Install-ment	Period Begin	Period End	Report Due	Payment
1	N/A	N/A	N/A	First installment of \$38,000 will be processed within 20 days of full execution of this AGREEMENT.
2	N/A	N/A	N/A	Second installment of up to \$22,000 will be processed upon CITY'S acceptance and approval of GRANTEE'S enrollment/cohort data.

EXHIBIT D
MONITORING, EVALUATION AND REPORTING REQUIREMENTS

A. Fiscal Responsibilities of GRANTEE:

GRANTEE shall:

1. Appoint and submit to CITY the name of a fiscal contact who shall be responsible for the financial and accounting activities of the GRANTEE, including the receipt and disbursement of GRANTEE funds.
2. Establish and maintain a system of accounts that shall conform to generally accepted principles of accounting for budgeted funds. Such system of accounts shall be subject to review and approval of CITY.
3. Document all costs by maintaining complete and accurate records of all financial transactions, including but not limited to, contracts, invoices, time cards, cash receipts, vouchers, canceled checks, bank statements and/or other official documentation, evidencing in proper detail the nature and propriety of all charges.
4. Submit reports and invoices detailing expenditures as outlined in **EXHIBIT C** in such form as CITY shall require.
6. Submit to CITY at such times and in such forms as CITY may require, such statements, records, reports, data, and information pertaining to matters covered by this AGREEMENT.

B. Records, Reports and Audits of GRANTEE:

1. Establishment and Maintenance of Records. GRANTEE 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:
 - a. All direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this AGREEMENT; and
 - b. All other 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. GRANTEE shall preserve and make available its records:
 - a. for the period of four (4) years from the date of final payment to GRANTEE under 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 four (4) 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, GRANTEE 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. GRANTEE 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 four (4) 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 four (4) years from the date of any resulting settlement.

4. Audits.

a. Independent Audits.

(1) If required by CITY's Grant Manager, GRANTEE shall submit an agency audit that conforms to generally accepted auditing standards and that includes the following components:

- A. Balance Sheet or Statement of Financial Position;
- B. Statement of Support, Revenue and Expenses and Changes in Fund Balances or Statement of Activities;
- C. Statement of Functional Expenses;
- D. Independent Auditor's Report. If the audit includes a Management Letter, this must also be submitted to the CITY.
- E. Schedule of Government Financial Assistance which identifies the gross amounts of grants obtained from the CITY and other governmental sources and shows the amount received and disbursed under each grant during the audited fiscal year; and
- F. Report on Compliance and on Internal Control over Financial Reporting based on an Audit of Financial Statements performed in Accordance with Government Auditing Standards indicating that a review of internal controls was performed and identifying material weaknesses and/or reportable conditions, if any.

Funds may be set aside in GRANTEE's budget in an amount equal to CITY's fair share of the GRANTEE's cost of the audit, if required.

(2) If GRANTEE expends \$500,000 or more in a year in Federal awards, GRANTEE shall submit an audit report that conforms to the requirements of OMB Circular A-133 for Non-Profit Institutions. Funds may be set aside in GRANTEE's budget in an amount equal to CITY's fair share of the GRANTEE's cost of an A-133 independent audit, if required.

- (3) The GRANTEE's contract with its independent auditor shall require that the audit ascertains and determines that no services provided by the GRANTEE under this AGREEMENT are duplicative of services provided to another agency from which GRANTEE receives funding and are not being reimbursed from funding received from another agency.
 - (4) GRANTEE shall also submit a written agency management response to the findings of the Internal Control Report, if required.
 - (5) GRANTEE shall obtain three (3) bids for an outside auditor to conduct the agency audit. The AGREEMENT with an outside auditor can span a term of multiple years but it is highly recommended that the GRANTEE rotate independent auditors every three years.
 - (6) GRANTEE shall enter into an AGREEMENT with an outside auditor no later than sixty (60) days before the end of each Fiscal Year calling for a financial and compliance audit of GRANTEE's Fiscal Years that are covered by this AGREEMENT. The written AGREEMENT may be in the form of an engagement letter prepared by the auditor and approved by GRANTEE.
 - (7) An audit report must be completed and posted in PDF format on WebGrants within six (6) months of the end of each of the GRANTEE's Fiscal Years covered by this AGREEMENT. If this AGREEMENT expires or is terminated on a date that occurs after the period covered by the foregoing audit, GRANTEE shall deliver an audit report within two hundred and fifty (250) days after the expiration or termination of this AGREEMENT auditing the period not covered by the prior audit.
 - (8) Should GRANTEE not enter into an AGREEMENT with an outside auditor or should an audit not be done on a timely basis, the CITY, at its discretion, may enter into an AGREEMENT with an independent auditor to do the audit at GRANTEE's expense.
 - (9) The GRANTEE shall submit to the CITY copies of management letters the auditor prepares for the GRANTEE as part of the audit engagement.
 - (10) All audits must be performed by Certified Public Accountants currently certified and licensed to practice in the State of California. GRANTEE must have Auditor's proof of current licensing on file in GRANTEE's office. GRANTEE must submit to the CITY's Parks, Recreation and Neighborhood Services Department, Administrative Services Division a copy of Auditor's certification to practice in California with the audit.
- b. CITY Audits. The CITY may perform an independent audit. Such audits may cover programmatic as well as fiscal matters. GRANTEE 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.

- c. Disallowed Costs. GRANTEE is liable for repayment of disallowed costs as determined by CITY. Disallowed costs may be identified through audits, monitoring or other sources. GRANTEE shall be afforded the opportunity to respond to any adverse findings that may lead to disallowed costs. CITY shall make the final determination of disallowed costs.
- d. GRANTEE shall not adjust any line item expenditures in the Budget Summary (**EXHIBIT B**) by more than ten percent (10%) or Two Thousand Dollars (\$2,000), whichever is greater, without the prior approval of the CITY. GRANTEE shall make such requests for the line item adjustments in writing to the CITY. Failure to do so may, at CITY's option, result in disallowed costs.

C. Monitoring and Evaluation

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

D. Reporting

1. **Quarterly Performance and Fiscal Reports:** GRANTEE shall submit quarterly reports or other specific fiscal or reporting requirements regarding GRANTEE's performance of the Grant Services in accordance with the schedule set forth in **EXHIBIT C**. The quarterly reports must be on a form approved by CITY.
2. **Annual Year-End Report:** GRANTEE shall submit a narrative Year-End Report thirty (30) calendar days after the last day of the term of this AGREEMENT. The report must describe how the Program services provided met the objectives contained in **EXHIBIT A**.

EXHIBIT F

INSURANCE REQUIREMENTS

The GRANTEE, at GRANTEE'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 the GRANTEE, its agents, representatives, employees or subcontractors.

I. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- A. The coverage provided by Insurance Services Office Form Commercial General Liability coverage ("occurrence") Form Number CG 0001, including coverage for abuse and molestation; and
- B. The coverage described in Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
- C. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
- D. Professional Liability Errors and Omissions.
Applicable only if Professional services are being provided such as, but not limited to: family or group therapy, counseling sessions, or program(s) which include drug and alcoholism rehabilitation centers, state or federal social service referral agencies, agencies involved with individual and family therapy, domestic counseling, and group therapy, child guidance clinics and agencies treating autistic and psychotic children.

There shall be no endorsement reducing the scope of coverage required above unless approved by the CITY's Risk Manager.

II. Minimum Limits of Insurance

The GRANTEE shall maintain limits no less than:

- A. Commercial General Liability: \$1,000,000 combined single limit 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
- B. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
- C. 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

D. Professional Liability Errors and Omissions \$1,000,000 Aggregate Limit.

III. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by the CITY's Risk Manager. At the option of the CITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its officers, employees, agents and contractors; or the GRANTEE 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.

IV. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

A. Commercial General Liability and Automobile Liability Coverages.

1. Insured. 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, the GRANTEE; products and completed operations of the GRANTEE; premises owned, leased or used by the GRANTEE; and automobiles owned, leased, hired or borrowed by the GRANTEE. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officers, employees, agents and contractors.
2. Contribution Not Required. The GRANTEE's insurance coverage shall be primary insurance as respects the CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by the CITY, its officers, employees, agents or contractors shall be excess of the GRANTEE's insurance and shall not contribute with it.
3. Provisions Regarding the Insured's Duties After Accident or Loss. Any failure to comply with reporting provisions of the policies by the GRANTEE shall not affect coverage provided the CITY, its officers, employees, agents, or contractors.
4. Coverage. Coverage shall state that the GRANTEE'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.
5. Coverage shall contain a waiver of subrogation in favor of the CITY, its officers, employees, agents, and contractors.

B. Workers' Compensation and Employers' Liability

Coverage shall contain a waiver of subrogation in favor of the CITY, its officers, employees, agents, and contractors.

C. 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 the CITY's Risk Manager, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium.

V. Acceptability of Insurers

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

VI. Verification of Coverage

The GRANTEE shall furnish the 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 or mailed to the CITY contact address as referenced on the Summary Page of this AGREEMENT.






VII. Subcontractors

The GRANTEE shall include all subcontractors as insured under its policies or shall obtain separate certificates and endorsements for each subcontract.

Contract with Prosperity Lab for Mesa Redonda 2_28_23

Created: **03/02/2023**
Status: Signed
Transaction ID: 58c252e2-3283-4e16-9450-98219f4ca54d

"Contract with Prosperity Lab for Mesa Redonda 2_28_23" history

-  Nanci Klein created the document.
03/02/2023 10:08:55 PM GMT
-  Document was emailed to mimi@prosperitylab.org
03/02/2023 10:08:56 PM GMT
-  mimi@prosperitylab.org signed the document.
03/02/2023 10:29:05 PM GMT - IP address [REDACTED]
-  Document was emailed to psanche5a@gmail.com
03/02/2023 10:29:06 PM GMT
-  psanche5a@gmail.com signed the document.
03/03/2023 5:47:17 PM GMT - IP address [REDACTED]
-  Document was emailed to Sarah Zarate
03/03/2023 5:47:18 PM GMT
-  Sarah Zarate signed the document.
03/04/2023 12:10:06 AM GMT - IP address [REDACTED]
-  Document was successfully signed and filed
03/04/2023 12:10:07 AM GMT