

**DRAFT ON-CALL TEMPORARY PERSONNEL SERVICES AGREEMENT
BETWEEN THE CITY OF SUNNYVALE AND APPLEONE, INC. DBA
APPLEONE EMPLOYMENT SERVICES (APPLEONE)**

THIS AGREEMENT dated _____ is by and between the CITY OF SUNNYVALE, a California chartered municipal corporation ("CITY"), and APPLEONE, INC. DBA APPLEONE EMPLOYMENT SERVICES (APPLEONE) ("AGENCY"), a California corporation.

WHEREAS, CITY issued a Request for Qualifications (RFQL) F23-118 on May 15, 2023;

WHEREAS, CITY is in need of specialized personnel services in relation to on-call temporary personnel placement services; and

WHEREAS, in reliance upon AGENCY's representations regarding its qualifications, CITY finds that AGENCY possesses the skill and expertise to provide the required services;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Services by AGENCY

AGENCY shall provide qualified individuals to provide temporary personnel placement services, as needed, in accordance with Exhibit "A". Each individual performing the required services under this Agreement shall be approved by CITY in advance and shall adhere to the additional requirements set forth in Exhibit "B".

All exhibits, including all associated -attachments, are attached hereto and incorporated herein by reference.

2. Time for Performance

The term of this Agreement shall be for three (3) years from date of execution unless otherwise terminated in accordance with Section 18 below. At the sole discretion of the City Manager or authorized designee, CITY may request, and the AGENCY may mutually agree, to extend the Agreement for up to three (3) additional one-year terms. Any extension of this Agreement must be in writing as an amendment and signed by the parties in accordance with Section 19 below.

3. Duties of CITY

CITY shall supply any documents or information available to CITY required by AGENCY for performance of AGENCY'S duties. AGENCY shall return any materials provided to CITY upon completion of the work.

CITY shall also provide to individuals who are assigned by AGENCY to perform service to CITY a work space; access to standard office equipment, including

telephones; and materials and supplies, as required, while working at a CITY facility. AGENCY shall use such materials only for providing service to CITY and for no other purpose.

4. Compensation

CITY agrees to pay AGENCY at the rates set forth in Exhibit "C" attached and incorporated by reference. Total compensation shall not exceed One Million Two Hundred Thousand and No/100 Dollars (\$1,200,000.00).

AGENCY shall submit invoices to CITY no more frequently than monthly for services provided to date. AGENCY shall submit with invoices a weekly time card to CITY staff for approval. Payment shall be made within thirty (30) days upon receipt of an accurate, itemized invoice by CITY's Accounts Payable Unit. All invoices, including detailed backup, shall be sent to City of Sunnyvale, attention Accounts Payable, P.O. Box 3707, Sunnyvale, CA 94088-3707 or accountspayable@sunnyvale.ca.gov.

5. Ownership of Documents

CITY shall have full and complete access to AGENCY's working papers, drawings and other documents during progress of the work. All documents of any description prepared by AGENCY shall become the property of the CITY at the completion of the project and upon payment in full to the AGENCY. AGENCY may retain a copy of all materials produced pursuant to this Agreement.

6. Conflict of Interest

No officer or employee of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement AGENCY shall not accept employment or an obligation which is inconsistent or incompatible with AGENCY's obligations under this Agreement.

Pursuant to CITY's Standard Conflict of Interest Code, CITY has determined that, depending on the position, certain individuals performing services under this Agreement may be required to file a Statement of Economic Interest (Form 700), which can be found at www.fppc.ca.gov. To facilitate electronic submittal of Form 700, the individual who has been assigned by AGENCY to perform services for CITY shall send the following information to cityclerk@sunnyvale.ca.gov: 1) individual's first and last name; 2) individual's email address; 3) date when individual's assignment for CITY begins pursuant to this Agreement; 4) (if known) date when individual will cease work under this contract.

Government Code Section 91013 provides that any person who files a statement after its deadline shall be liable in the amount of \$10 per day, up to a maximum of \$100, in addition to any administrative penalty (up to the statutory maximum, currently \$5,000) imposed by the Fair Political Practices Commission (FPPC). If CITY does not receive the applicable Form 700, CITY is required to refer this matter to the FPPC or other appropriate enforcement agency.

7. Confidential Information

AGENCY shall maintain in confidence and at no time use, except to the extent required to perform its obligations hereunder, any and all proprietary or confidential information of CITY of which AGENCY may become aware in the performance of its services.

8. Compliance with Laws

- A. AGENCY shall not discriminate against, or engage in the harassment of, any City employee or volunteer or any employee of AGENCY or applicant for employment because of an individual's race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status, or any other protected characteristic in violation of federal or state law. This prohibition shall apply to all of AGENCY's employment practices and to all of AGENCY's activities as a provider of services to the City.
- B. AGENCY shall comply with all federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the Agreement.
- C. AGENCY acknowledges that it is responsible for compliance with all requirements of the Patient Protection and Affordable Care Act. Further, AGENCY acknowledges that it will offer compliant health insurance coverage to any of its employees assigned to the CITY who meet the eligibility criteria of the Patient Protection and Affordable Care Act.
- D. AGENCY understands that CITY is a public agency member of the California Public Employees Retirement System ("CalPERS") and is required to comply with CalPERS rules and state law related to membership and administration, and that CalPERS maintains and implements, from time to time, certain rules related to CalPERS members or annuitants. Such rules may be applicable to CalPERS members and annuitants hired by AGENCY and performing work through AGENCY for the City of Sunnyvale. AGENCY agrees to cooperate with City in complying with any requirements established by the CalPERS and/or assist the City in complying with CalPERS requirements to the fullest extent possible with respect to AGENCY's employees. Such requirements may include, but are not limited to requiring employees to complete the CalPERS notice of exclusion form, complying with CalPERS rules requiring payment of members and annuitants consistent with rates in published City salary schedules for City positions performing similar work, disclosing their employees' actual pay rates, and assisting the City in collecting employee contributions.

9. Independent Contractor

AGENCY is acting as an independent contractor in furnishing the services or materials and performing the work required by this Agreement and is not an agent, servant or employee of CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and AGENCY. AGENCY is responsible for paying all required state and federal taxes.

10. Indemnity

AGENCY shall indemnify, defend, and hold harmless the CITY, its officers, officials, employees and volunteers from and against all claims, damages, losses and expenses, including attorney fees, arising out of the performance of the services, caused in whole or in part by any negligent act or omission of AGENCY, any subagency, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence or willful misconduct of the CITY.

11. Warranty and Remedy

AGENCY shall provide CITY with personnel who have demonstrated that they possess the qualifications requested by CITY.

CITY shall notify AGENCY of any unqualified personnel or other performance issues. Upon receipt of such notice, AGENCY shall promptly take action to correct such performance issues or replace such personnel.

12. Insurance

The City requires that AGENCY maintain insurance requirements on the Pacific Insurance Network System (PINS). AGENCY shall procure and maintain during the life of this Agreement policies of insurance as specified in Exhibit "D" attached and incorporated by reference, and shall provide all certificates and/or endorsements as specified in Exhibit "D" through PINS for approval by the City Risk Manager prior to AGENCY (or subcontractor) commencing any work under this Agreement.

13. City Representative

Delanie LoFranco, Human Resources Manager, as the City Manager's authorized representative ("CITY representative"), shall represent CITY in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

14. AGENCY Representative

Nic Schemm, Project Manager ("AGENCY representative"), shall represent AGENCY in all matters pertaining to the services and materials to be rendered under

this Agreement; all requirements of AGENCY pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the AGENCY representative.

15. Payroll Hours Reporting

AGENCY is responsible for submitting a bi-weekly hours report to CITY which identifies temporary personnel and hours worked for each pay period as well as a cumulative total. The report shall be based on the CITY'S fiscal year, which is July 1-June 30. AGENCY is responsible for retaining timecards for temporary personnel and shall provide timecard detail to CITY upon request. The hours report shall be submitted to:

Kristin Armbruster
City of Sunnyvale
Human Resources Manager
505 W. Olive Avenue, Suite 200
Sunnyvale, CA 94086
Phone: (408) 730-7490
Email: karmbruster@sunnyvale.ca.gov

16. Notices

All notices required by this Agreement, other than invoices for payment which shall be sent directly to Accounts Payable, shall be in writing, and sent by first class with postage prepaid, or sent by commercial courier, to address below.

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by email, to accomplish timely communication. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three business days after mailing.

To CITY: Tina Murphy, Director of Human Resources
Human Resources Department
CITY OF SUNNYVALE
P. O. Box 3707
Sunnyvale, CA 94088-3707

To AGENCY: Dr. Milton J. Perkins, Senior VP
AppleOne, Inc. dba AppleOne Employment services
1999 West 190th Street
Torrance, CA 90504

17. Assignment

Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other party.

18. Termination

- A. If AGENCY defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to AGENCY. In the event of such termination, AGENCY shall be compensated in proportion to the percentage of satisfactory services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. AGENCY shall present CITY with any work product completed at that point in time.
- B. Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY also shall have the right to terminate this Agreement for any reason upon ten (10) days' written notice to AGENCY. In the event of such termination, AGENCY shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. AGENCY shall present CITY with any work product completed at that point in time.
- C. If CITY fails to pay AGENCY, AGENCY at its option may terminate this Agreement if the failure is not remedied by CITY within thirty (30) days after written notification of failure to pay.

19. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced in writing as an amendment signed by all parties. If the amendment is signed electronically, the digital signatures must comply with the requirements of California Government Code Section 16.5.

20. Governing Law, Jurisdiction and Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its conflict of law principles. Proper venue for legal actions will be exclusively vested in a state court in the County of Santa Clara. The parties agree that subject matter and personal jurisdiction are proper in state court in the County of Santa Clara, and waive all venue objections.

21. Miscellaneous

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision.

IN WITNESS WHEREOF, the parties have executed this Agreement.

CITY OF SUNNYVALE ("CITY")

APPLEONE ("AGENCY")

By _____
City Manager

By _____

Name and Title

ATTEST:

By _____
City Clerk

By _____

Name and Title

APPROVED AS TO FORM:

By _____
City Attorney

EXHIBIT A SCOPE OF WORK

Agency shall provide qualified and competent temporary employees, upon request by the City. The City expects to require temporary employees with skills and expertise in the following areas although future needs may not be limited to these categories:

1. **Clerical/Administrative Employees** - Employees in this category may be required to possess minimum typing skills and experience as defined by the job assignment and minimum specifications outlined in the respective City job specification. Level of skill required may vary by assignment. Examples of this category are: Office Assistant, Paraprofessional/Administrative or Customer Service employee.
2. **Miscellaneous Professionals and Paraprofessionals** - The City may require temporary employees to include librarians, engineers, buyers, paralegals, accountants, planners, and analyst. Individuals may be referred by the City to the agency for assignment to the City, or the agency may be required to recruit qualified candidates.
3. **Cashiers** – The City may require temporary employees to perform cashiering functions as part of the job assignment. Employees in this category will be required to pass appropriate background investigations.
4. **Laborers** - Laborers must be able and willing to perform routine manual labor and to understand simple oral and written instructions in English. They also must be able to lift articles weighing up to 50 pounds and must have a Class C California driver's license. While some previous manual labor experience is desirable, the tasks to be performed may be learned on the job. Examples of this category are:
 - a. **Laborers – General Maintenance** - These employees perform a variety of unskilled and semi-skilled manual tasks in the maintenance of public buildings and furnishings, and swimming pools. Employees may work irregular hours, night shifts and weekends.
 - b. **Laborers - Grounds Maintenance** – These employees may be required on a seasonal basis to perform grounds maintenance tasks at City parks and golf courses. They typically would be required to work variable hours, including weekends.
 - c. **Laborers - Public Works and/or Environmental Services** - These temporary employees may be required to work a non-standard schedule.
 - d. **Laborers – Meter Reading** – These temporary employees perform meter reading tasks throughout the City of Sunnyvale.
5. **Recreation and Golf Aides, Specialists, Lifeguards and Swim Instructors** - These positions require flexible hours, depending upon the event or activity being staffed, and may require a Class C California driver's license and certifications appropriate to the work.

Because these employees may work with children and seniors, the agency will be required to conduct extensive pre-screening, including fingerprinting to be used by the City for criminal background checks by the California Department of Justice (DOJ). Drug and alcohol testing and TB testing on selected placements will also be required as specified by the City. Any employee who receives other than a "clear" or "no record" response from the DOJ shall not be assigned to work with minors or seniors at the City.

The City reserves the right to contract out the management of one or more programs or special events, including staffing, to firm(s) other than those awarded contract(s) as the result of this RFQL.

6. **Information Technology Professionals** – These temporary employees may include Help Desk support, Network Engineers, Project Management or Software Applications.

EXHIBIT B ADDITIONAL REQUIREMENTS

1. Criminal Background Checks. Temporary employees that are placed with the City are required to undergo criminal background checks conducted by the agency. Any applicant who receives other than a "clear" or "no record" result shall have their results reviewed by the agency for an appropriate job nexus consistent with current state and federal guidelines. The agency shall verify in writing, as outlined in Appendix A, with the City that the background check has been performed for each employee placed with the City.
2. Limitation of Hours. It is City policy that no temporary employee shall be assigned to the City more than 900 hours per fiscal year. The agency shall maintain a record of the total hours each temporary employee has been on all assignments at the City during the fiscal year and shall inform the appropriate City supervisor, in writing with a copy to the Director of Human Resources or designee, whenever the length of an employee's assignment reaches 800 hours in a fiscal year; such notice shall be made within two weeks of the employee reaching 800 hours. Under no circumstances shall the agency allow a temporary employee's assignment to extend beyond these time limits. In addition, the agency will provide the City the number of hours worked for each temporary employee every two weeks.
3. Conflicts of Interest and CalPERS Requirements. The agency shall obtain the following information from any temporary employee being considered for assignment to the City:
 - Does the individual have a family relationship with any City employee and/or official? If the answer is "yes", the agency shall obtain approval from the Director of Human Resources or his or her designee prior to making the assignment.
 - Is the individual a member of the California Public Employment Retirement System (CalPERS)? If the answer is "yes", this person will not be assigned to the City of Sunnyvale.
 - Is the individual a retiree of the California Public Employment Retirement System (CalPERS)? If the answer is "yes", this person must have been retired for a minimum of 180 days. In addition, the compensation paid to a CalPERS retiree cannot be less than the minimum or exceed the maximum paid to a regular City of Sunnyvale employee performing equivalent or comparable work. CalPERS retirees cannot receive any benefit, incentive, compensation in-lieu of benefits, or any other form of compensation in addition to their hourly pay rate.

- No officer or employee of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement AGENCY shall not accept employment or an obligation which is inconsistent or incompatible with agency's obligations under this Agreement.

APPENDIX A

City of Sunnyvale

Affirmation of Criminal Background Check Completion

Contract/PO Ref. #:

This form acknowledges that the temporary employee, _____ (insert temporary agency staff name) _____, from _____ (“Agency”) has completed a criminal background check as required and detailed within Exhibit B of the Temporary Personnel Services Agreement between the City of Sunnyvale and said Agency.

Agency Representative Signature

Agency Representative Name

Date

**EXHIBIT C
COMPENSATION SCHEDULE**

Classification	Hourly Salary Range	Mark-Up Rate
Clerical/Administrative	\$20-\$52	32%
Misc. Professionals and Paraprofessionals	\$30-\$75	32%
IT Professionals	\$32-\$120	38%
Cashiers	\$20-\$32	38%

The payrates above are subject to the limitations set forth in Exhibit B for retirees of the CalPERS retirement system. If any of the limitations apply, CITY and AGENCY shall mutually agree in writing to an appropriate payrate.

EXHIBIT D INSURANCE REQUIREMENTS

AGENCY shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the AGECONY, their agents, representatives, or employees.

Minimum Scope and Limits of Insurance. AGENCY shall maintain limits not less than:

1. **Commercial General Liability:** coverage written on an occurrence basis with limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury and property damage. ISO Occurrence Form shall be at least as broad as CG 0001.
2. **Automobile Liability:** coverage with a combined single limit of not less than \$1,000,000 per occurrence applying to all owned, non-owned, or hired vehicles used in conjunction with this contract for bodily injury and property damage. ISO Form CA 0001 or equivalent is required.
3. **Workers' Compensation:** Statutory Limits and **Employer's Liability:** \$1,000,000 per accident for bodily injury or disease.

Industry Specific Coverages. If checked below, the following insurance is also required:

- ☒ **Professional Liability/Errors and Omissions Liability** coverage written on an occurrence basis with limits not less than \$2,000,000 per occurrence.
- ☐ **Crime coverage** with limits not less than \$500,000 to include third party premises endorsement.
- ☐ If working directly with minors, the Certificate of Insurance must include coverage for **molestation and sexual abuse** with limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate.
- ☐ **Garage Liability coverage** written on an occurrence basis with limits not less than \$1,000,000 per occurrence.
- ☐ **Garage Keepers Liability coverage** with limits not less than \$100,000 per location.
- ☐ **On-Hook coverage** with limits not less than \$100,000 per vehicle.

Deductibles, Self-Insured Retentions and Other Coverages:

Any deductibles or self-insured retentions must be declared and approved by the City of Sunnyvale, Risk Manager. The Contractor shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

The aforementioned insurance requirements can be met through any combination of self-insured, primary and excess/umbrella policies that fulfill the stipulated coverage as cited above.

Other Insurance Provisions:

1. During the term of the contract, the City of Sunnyvale, its officers, officials, employees, agents, and volunteers are to be covered as an additional insured in the Contractor's commercial general liability policy (and if applicable valuable papers and electronic data processing, and cyber liability policies) with respects to liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sunnyvale, its officers, officials, employees, agents, or volunteers.

Additional Insured Endorsement for ongoing operations at least as broad as ISO CG 20 10 Scheduled, or automatic CG 20 38.

2. During the term of the contract, the Contractor's Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City of Sunnyvale.
3. For all Architects, Engineers and Design Professionals - If Industry Specific Coverage box is check above and if the Contractor's Professional Liability/Errors and Omissions coverage is written on a claims made basis:
 - a. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
 - b. Insurance must be maintained and evidence of insurance must be provided *for at least three (3) years after completion of the contract of work*.
 - c. If coverage is canceled or non-renewed, and not *replaced with another claims-made policy form with a Retroactive Date* prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of *three (3) years* after completion of contract work.
4. For any claims related to this agreement, the Contractor's insurance shall be primary. Any insurance or self-insurance maintained by the City of Sunnyvale, its officers, officials, employees, agents and volunteers shall be excess of the Contractor's insurance and shall not contribute with it and shall be at least as broad as ISO CG 20 01 04 13.
5. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Sunnyvale, its officers, officials, employees, agents or volunteers.

6. The Contractor'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.
7. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of Sunnyvale.
8. Any umbrella or excess Insurance Liability policies shall be true "following form" of the underlying policy coverage, terms, conditions, and provisions and shall meet all of the insurance requirements stated in this document, including the additional insured, SIR, and primary and non-contributory insurance requirements for the benefit of City (if agreed to in a written contract or agreement) until all coverage carried by or available to the Contractor's primary and excess liability policies are exhausted and before the City's own Insurance or self-insurance shall be called upon to contribute to a loss.
9. The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated above shall not serve to reduce the Contractor's policy limits of coverage. Therefore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, and who are admitted and authorized to do business and in good standing in California unless otherwise acceptable to the City of Sunnyvale's Risk Manager.

Verification of Coverage:

Contractor shall furnish the City of Sunnyvale with an original Certificate of Insurance effecting the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City of Sunnyvale, Risk Manager prior to commencement of work.

The Contractor shall provide certificate(s) evidencing renewals of all insurance required herein prior to the expiration date of any such insurance. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

For all insurance policy renewals during the term of this Contract, Contractor shall submit insurance certificates reflecting the policy renewals through PINS.

Subcontractors

Contractor shall require all sub-contractors to procure and maintain insurance policies subject to these requirements. Failure of Contractor to verify existence of sub-contractor's insurance shall not relieve Contractor from any claim arising from sub-contractors work on behalf of Contractor.