

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE FINDING THAT THE NOVAWORKS FOUNDATION SUPPORTS A PUBLIC PURPOSE AND AUTHORIZING THE CITY MANAGER TO EXECUTE A COOPERATION AND ADMINISTRATION AGREEMENT

WHEREAS, the NOVAWorks Foundation (“the Foundation”) is a California nonprofit public benefit corporation, exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code (“the Code”) of 1986, as amended; and

WHEREAS, the Foundation was created to enhance workforce development services provided by the City’s NOVA Workforce Services Department (NOVA) for the residents and businesses of seven Santa Clara County cities (Cupertino, Los Altos, Milpitas, Mountain View, Palo Alto, Santa Clara and Sunnyvale and San Mateo County under the Workforce Innovation and Opportunity Act (“WIOA”)); and

WHEREAS, pursuant to WIOA the City Council acts as the Chief Local Elected Official for NOVA; and

WHEREAS, since the creation of the Foundation the City has acted as the fiscal agent for the Foundation without formalizing the relationship; and

WHEREAS, NOVA is funded primarily through the WIOA, which limits funding for specific activities and to serve eligible participants as defined under WIOA; and

WHEREAS, the Foundation exists to fill the gaps in NOVA services to benefit residents of the City as well as residents within the NOVA Workforce Region by increasing and improving job training programs and opportunities; and

WHEREAS, the Foundation is a supporting organization of the City and the Foundation's charitable purpose furthers the public purposes of the City; and

WHEREAS, the City would like to formally memorialize the relationship between the Foundation and the City to establish certain administrative assistance and other services provided by the City to the Foundation.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYVALE THAT:

1. The City Council finds and determines that the Foundation is a supporting organization of the City in accordance with Section 509(a)(3) of the Code, and the Foundation's charitable purpose furthers the public purposes of the City; and

2. The City Council authorizes the City Manager or his designee to execute the Cooperation and Administration Agreement between the City and the Foundation attached in substantial form as Exhibit "A"; and
3. The City Council further authorizes the City Manager or his designee to execute any other agreement, document or instrument and take any additional action as may be necessary to carry out the purposes of this Resolution.

Adopted by the City Council at a regular meeting held on _____, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:
RECUSAL:

ATTEST:

APPROVED:

City Clerk
(SEAL)

Mayor

APPROVED AS TO FORM:

City Attorney

EXHIBIT A

COOPERATION AND ADMINISTRATION AGREEMENT
(NOVAWORKS FOUNDATION)

This Cooperation and Administration Agreement (the "Agreement") is dated for reference purposes on _____, 2019, by and between the City of Sunnyvale, a municipal corporation (the "City"), and NOVAworks Foundation, a California nonprofit public benefit corporation (the "Foundation").

RECITALS

A. The Foundation is a California nonprofit public benefit corporation, exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), whose charitable purpose is to provide job training and related activities. The Foundation is a supporting organization of the City, in accordance with Section 509(a)(3) of the Code, and the Foundation's charitable purpose furthers the public purposes of the City.

B. The City and the Foundation desire to enter into this Agreement to set forth: (i) the parties' desire to efficiently and effectively cooperate in furtherance of the charitable purposes of the Foundation, and the public purposes of the City, of increasing and improving job training programs and opportunities within the service area of the NOVA Workforce Board established pursuant to the Workforce Innovation and Opportunity Act (the "Service Area"); and (ii) the relationship between the parties regarding certain administrative assistance and other services provided by the City to the Foundation.

NOW, THEREFORE, in consideration of the covenants and promises contained herein, the City and the Foundation (each a "Party", and, collectively, the "Parties") agree as follows:

ARTICLE 1
PURPOSE

Section 1.1 Purpose. The purpose of this Agreement is to set forth the relationship and the respective rights, duties, and obligations of the Parties regarding the administrative and other assistance provided by the City to the Foundation. The Parties desire to establish procedures to effectively and efficiently administer the charitable assets of the Foundation.

Section 1.2 Annual Payment. In consideration for the City's performance of its obligations pursuant to this Agreement, the Foundation shall make an annual payment to the City in the amount of One Dollar (\$1.00) no later than January 31 during each year this Agreement is in effect (or such other date mutually determined by the Parties).

Section 1.3 Effective Date. The Effective Date of this Agreement shall be July 1, 2019.

ARTICLE 2
CITY OBLIGATIONS

Section 2.1 Administrative Services. The City shall provide adequate clerical services and administrative assistance, as reasonably determined by the City, for the benefit of the Foundation.

Section 2.2 Accounting Services. For the benefit of the Foundation, the City shall provide the necessary accounting and fiscal implementation services of the Foundation's assets, including, but not limited to: (i) establishing and maintaining one, or more, separate account(s) for the Foundation's cash assets at such federally-insured financial institution(s) reasonably determined by the City (collectively, the "Foundation Account"); (ii) depositing the Foundation's cash assets into such Foundation Account; (iii) making disbursements solely from the Foundation Account, on behalf of the Foundation, necessary to satisfy the Foundation's debts and obligations; (iv) preparing the Foundation's IRS Form 990, or any equivalent informational return required to be filed by the Foundation pursuant to the Code, or any other applicable law; and (v) otherwise implementing the financial accounting and records of the Foundation, as mutually determined by the Parties. Notwithstanding the foregoing, nothing in this Agreement imposes any liability on the City for any debts, liabilities, or any obligations of the Foundation, and all such debts, liabilities, or any other obligation of the Foundation shall be satisfied solely by the proceeds of the Foundation Account or such other assets of the Foundation (if any). In the event of any conflict between the preceding sentence and any other provision of this Agreement, the terms of the preceding sentence shall, in all events, control.

Section 2.3 Procurement Services. The City and the Foundation shall create a mutually agreeable procurement procedure to facilitate an efficient and equitable process that adheres to any applicable legal or grant requirements.

ARTICLE 3
FOUNDATION OBLIGATIONS

Section 3.1 Appointment of City as Agent. As of the Effective Date, the Foundation hereby irrevocably appoints the City as the Foundation's agent during the term of this Agreement. As the Foundation's agent, the City is hereby authorized to execute any and all documents, accept cash or other assets, and otherwise take such other actions, on behalf of the Foundation, as necessary to implement the administrative and fiscal services set forth in this Agreement.

Section 3.2 Reimbursement of City Costs. As additional consideration for the City's performance of its duties and obligations set forth herein, the Foundation shall reimburse the City for the costs and expenses incurred by the City on behalf of the Foundation, including, but not limited, to the reimbursement to the City for any City employee, or third-party costs incurred by the City to the extent necessary for the performance of activities for the benefit of the Foundation. Such reimbursement shall be made on an annual basis, or at such other times mutually determined by the Parties.

Section 3.3 Indemnification. As additional consideration for the City's performance of its duties and obligations set forth herein, the Foundation agrees to indemnify, defend (with counsel reasonably acceptable to the City) and hold the City, its council members, officers, employees, agents and representatives, harmless from any and all claims, causes of action, injuries or damages arising out of this Agreement. This indemnity shall include, but shall not be limited to, the payment to the City of any reasonable costs, including attorneys' fees, incurred in defending any action filed against the City, its officers, employees, agents and representatives covered by this Agreement. This obligation shall survive the termination or expiration of this Agreement.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE FOUNDATION

Section 4.1 General Representations and Warranties of the Foundation. The Foundation represents and warrants as follows:

(a) The Foundation is a duly organized, validly existing, California nonprofit public benefit corporation, is in good standing and is qualified to do business under the laws of the State of California, with full power to conduct its business, and undertake the obligations of the Foundation set forth in this Agreement.

(b) The Foundation is exempt from federal income taxation pursuant to Section 501(c)(3) of the Code.

(c) All actions and approvals legally required to be taken by the Foundation in connection with authorization and execution of this Agreement and the consummation of the transactions contemplated by and related to this Agreement have been taken or obtained.

(d) This Agreement has been duly authorized, executed and delivered by the Foundation and, when executed and delivered by the Foundation, will constitute the legal, valid and binding obligation of the Foundation, enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization or other laws or equitable principles limiting creditors' rights generally.

Section 4.2 Continuing Obligation of Representations and Warranties. Upon discovery by the Foundation of a breach of any of such representations, warranties and covenants which materially and adversely affects the City, the Foundation shall give prompt written notice to the City.

ARTICLE 5 DEFAULT AND REMEDIES

Section 5.1 Events of Default by the Foundation. Upon the occurrence of any one or more of the following events, the City shall have the remedies specified in Section 5.3 of this Agreement:

(a) Failure by the Foundation to observe or perform in any material respect any covenant, condition or agreement in this Agreement or any other agreement between the City and the Foundation (or any entity controlled by the Foundation) to be observed or performed by the Foundation for a period of thirty (30) days (or such shorter time-frame set forth in the applicable agreement between the Parties) after written notice, specifying such failure and requesting that it be corrected, is given to the Foundation by the City;

(b) Entry of a decree or order of a court, agency, or supervisory authority having jurisdiction for the appointment of a conservator or receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings, or for the winding up or liquidation of its affairs, against the Foundation and such decree or order shall have remained in force, undischarged or unstayed for a period of ninety (90) days;

(c) Consent by the Foundation to the appointment of a conservator or receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings or relating to the Foundation or of or relating to all or substantially all of the Foundation's property;

(d) An admission by the Foundation in writing of the Foundation's inability to pay its debts generally as they become due, or the filing of a petition to take advantage of any applicable insolvency or reorganization statute, or the making of an assignment for the benefit of the Foundation's creditors or voluntarily suspending payment of the Foundation's obligations; or

(e) The discovery by the City that any representation of, or warranty by, the Foundation to the City was false in any material respect when made, or at any time it was warranted to be true pursuant to the terms of this Agreement.

Section 5.2 Events of Default by City. Upon the occurrence of any one or more of the following events, the Foundation shall have the remedies specified in Section 5.4 of this Agreement:

(a) Failure by the City to observe or perform in any material respect any covenant, condition or agreement in this Agreement to be observed or performed by the City for a period of thirty (30) days after written notice, specifying such failure and requesting that it be corrected, is given to the City by the Foundation; provided, however, if the failure stated in the notice cannot be remedied within such thirty (30) day period, failure by the City to commence to cure within thirty (30) days and to diligently pursue and complete the cure thereafter;

(b) Entry of a decree or order of a court, City, or supervisory authority having jurisdiction for the appointment of a conservator or receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings, or for the winding up or liquidation of its affairs, against the City and such decree or order shall have remained in force, undischarged or unstayed for a period of ninety (90) days;

(c) Consent by the City to the appointment of a conservator or receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar

proceedings or relating to the City or of or relating to all or substantially all of the City's property; or

(d) An admission by the City in writing of the City's inability to pay its debts generally as they become due, or the filing of a petition to take advantage of any applicable insolvency or reorganization statute, or the making of an assignment for the benefit of the City's creditors or voluntarily suspending payment of the City's obligations.

Section 5.3 Remedies for the Foundation Default. Whenever any event referred to in Section 5.1 of this Agreement shall occur and be continuing, the City may take any one or more of the following remedial steps:

(a) Terminate this Agreement by notice in writing to the Foundation.

(b) The City may take whatever other action at law or in equity necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of the Foundation under this Agreement.

Section 5.4 Remedies for City Default. Whenever any event referred to in Section 5.2 of this Agreement shall occur and be continuing, the Foundation may terminate this Agreement, but shall have no right to any other remedies available at law or at equity. The Foundation hereby waives any right to pursue any other remedy, and shall be estopped from taking or otherwise pursuing any other remedy.

Section 5.5 Non-Exclusive Remedies. Unless otherwise expressly provided, no remedy conferred or reserved is intended to be exclusive of any other available remedy, but each remedy shall be cumulative and shall be in addition to other remedies given under this Agreement or existing at law or in equity. No delay or omission to exercise any right or power accruing under this Agreement shall impair any such right or power or shall be construed to be a waiver of such right or power, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle a Party to exercise any remedy reserved to it under this Agreement, it shall not be necessary to give any notice, other than such notice as may be required under this Agreement.

ARTICLE 6 MISCELLANEOUS PROVISIONS

Section 6.1 Cooperation Between the Parties. The Parties shall cooperate, and use good faith, commercially reasonable, efforts to cause the performance of each Party's respective rights, duties, and obligations set forth in this Agreement to efficiently and effectively further the charitable purposes of the Foundation, and the public purposes of the City, of increasing and improving job training programs and opportunities within the Service Area. To the extent applicable, the Parties shall execute such additional documents, and take such other actions (at no cost to the City) as may be reasonably necessary to implement the goals and objectives of this Agreement, including, but not limited to, executing such additional documents required to establish or otherwise maintain the Foundation Account.

Section 6.2 Notices. Any notices, requests, demands, payments or other communications under this Agreement shall be in writing and shall be deemed to be duly given if delivered by United States mail, certified, with return receipt requested, or express delivery with a delivery receipt. Such notice shall be effective on the date shown on the delivery receipt as of the date of delivery, the date delivery was refused, or the date the notice was returned as undeliverable. Notices shall be addressed as follows:

If to the Foundation:

NOVAworks Foundation
505 W. Olive Ave.
Sunnyvale, CA 94086
Attn: President

If to the City:

City of Sunnyvale
456 W. Olive Ave.
Sunnyvale, CA 94086
Attn.: City Manager

or such other address or addresses as may be furnished in writing to the other Party pursuant to the procedures set forth in this Section.

Section 6.3 Authorized Representatives of City and the Foundation.

(a) The City Manager of the City is designated to be the authorized representative of the City for purposes of this Agreement. Whenever this Agreement provides for consent of the City, the written consent of the City Manager, or his or her designee, shall be deemed to be the consent of the City. Whenever this Agreement provides for any action of the City to be taken, such action shall be taken by the City Manager, or his or her designee.

(b) The Foundation designates the President of the Foundation to be the authorized representative of the Foundation for purposes of this Agreement. Whenever this Agreement provides for consent of the Foundation, the written consent of the President of the Foundation shall be deemed to be the consent of the Foundation.

Section 6.4 Compliance with Law. The Foundation agrees to comply with all applicable state and federal laws and regulations in the performance of its obligations under this Agreement.

Section 6.5 Timely Performance. Time is of the essence of this Agreement.

Section 6.6 Assignment of Rights or Duties Under this Agreement. The Foundation may not assign or delegate any of its rights, duties or obligations under this Agreement without the prior written approval of the City.

Section 6.7 Amendments. No amendment to this Agreement shall be effective unless it is reduced to writing and signed by the Parties.

Section 6.8 Waiver. No waiver of any term or provision of this Agreement shall be effective unless made in writing and signed by each of the Parties. Any written waiver shall be effective only in the instance given and then only with respect to the specific term or provision (or portion of a term or provision) of this Agreement to which it expressly relates and shall not be deemed or construed to constitute a waiver of any other term or provision (or portion of a term or provision) in any other instance.

Section 6.9 Binding on Successors. This Agreement inures to the benefit of, and is binding upon, the City and the Foundation and their respective agents, representatives, successors, and assigns; provided, however, the Foundation may only assign this Agreement as set forth in Section 6.6.

Section 6.10 Captions. The captions heading the various sections and subsections of this Agreement are for convenience only and do not in any way expand or limit the provisions of this Agreement.

Section 6.11 Construction of Terms. Any reference to either the singular or plural shall be deemed to include the other wherever it is necessary for the interpretation of this Agreement.

Section 6.12 Governing Law. This Agreement shall be interpreted under California law.

Section 6.13 Integration. This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written.

Section 6.14 No Third-Party Beneficiary. Nothing in this Agreement shall be construed to make any of the Parties hereto liable for any of the debts or other obligations of any other Party hereto, and the Parties hereto specifically acknowledge, agree and declare that no person is intended to be a third-party beneficiary of this Agreement.

Section 6.15 Term. This Agreement shall be effective as of the Effective Date and shall continue in effect until the earlier of: (i) this Agreement is terminated pursuant to Section 5.3 or Section 5.4; or (ii) either Party terminates this Agreement by providing written notice to the other Party at least thirty (30) days prior to the date of such termination.

Section 6.16 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

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The City and the Foundation have executed this Agreement as of the Effective Date.

CITY:

CITY OF SUNNYVALE, a municipal corporation

Kent Steffens, City Manager

APPROVED AS TO FORM:

John A. Nagel, City Attorney

THE FOUNDATION:

NOVAWORKS FOUNDATION, a California
nonprofit public benefit corporation

By: _____
Poncho Guevara, President

EXHIBIT B

**AMENDED AND RESTATED
BYLAWS OF
NOVAWORKS FOUNDATION**

ARTICLE 1. NAME AND OFFICES

SECTION 1. NAME AND PRINCIPAL OFFICE

The name of this corporation is NOVAworks Foundation (the "Corporation"). The principal office of this Corporation for the transaction of its business is located in Santa Clara County, California.

SECTION 2. CHANGE OF ADDRESS

The county of the Corporation's principal office can be changed only by amendment of these Bylaws and not otherwise. The Corporation's board of directors (the "Board of Directors" or the "Board") may, however, change the principal office from one location to another within the named county.

SECTION 3. OTHER OFFICES

The Corporation may also have offices at such other places, within or without the State of California, where it is qualified to do business, as its business may require and as the Board of Directors may, from time to time, designate.

ARTICLE 2. PURPOSES

SECTION 1. OBJECTIVES AND PURPOSES

The primary objectives and purpose of this Corporation shall be to develop innovative programs that advance economic sustainability for workers in transition and for new entrants to the labor market.

ARTICLE 3. MEMBERS

SECTION 1. DETERMINATION OF MEMBERS

The Corporation shall make no provisions for members, however, pursuant to Section 5310(b) of the Nonprofit Public Benefit Corporation Law of the State of California, any action which would otherwise, under law or the provisions of the Articles of Incorporation or Bylaws of this Corporation, require approval by a majority of all members or approval by the members, shall only require the approval of the Board of Directors.

ARTICLE 4. DIRECTORS

SECTION 1. NUMBER

The Corporation shall have a minimum of six (6) Directors. The number may be changed by amendment of this Bylaw, or by repeal of these Bylaws. Except for the Directors then in office upon adoption of these Bylaws, the Directors shall consist of: (i) three (3) current members of the NOVA Workforce Board (collectively referred to as the "NOVA Directors"); and (ii) three (3) individuals appointed by the NOVA Board; provided, however, in the event the NOVA Board no longer exists, then all Directors shall be appointed by the city council (the "City Council") of the City of Sunnyvale (the "City").

SECTION 2. POWERS

Subject to the provisions of the California Nonprofit Public Benefit Corporation Law and any limitations in the Articles of Incorporation, the activities and affairs of this Corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the Board of Directors.

SECTION 3. DUTIES

It shall be the duty of the Directors to:

- (a) Perform any and all duties imposed on them collectively or individually by law, by the Articles of Incorporation of this Corporation, or by these Bylaws.
- (b) Appoint and remove, employ and discharge, and, except as otherwise provided in these Bylaws, prescribe the duties and fix the compensation, if any, of all officers, agents and employees of the Corporation.
- (c) Supervise all officers, agents and employees of the Corporation to assure that their duties are performed properly.
- (d) Meet at such times and places as required by these Bylaws.
- (e) Register their addresses with the Secretary of the Corporation, and notices of meetings mailed or electronically mailed to them at such addresses shall be valid notices thereof.

SECTION 4. TERMS OF OFFICE

Each Director shall hold office until the next annual meeting for election of the Board of Directors as specified in these Bylaws, and until his or her successor is elected and qualifies.

SECTION 5. COMPENSATION

Directors shall serve without compensation.

SECTION 6. RESTRICTION REGARDING INTERESTED DIRECTORS

Notwithstanding any other provision of these Bylaws, not more than forty-nine percent (49%) of the persons serving on the Board may be interested persons. For purposes of this Section, "interested persons" means either:

- (a) Any person currently being compensated by the Corporation for services rendered it within the previous twelve (12) months, whether as a full or part-time office or other employee, independent contractor, or otherwise, excluding any reasonable compensation paid to a Director as Director; or
- (b) Any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of any such person.

SECTION 7. PLACE OF MEETINGS; BROWN ACT

Meetings shall be held at the principal office of the Corporation unless otherwise provided by the Board of at such place within or without the State of California, which has been designated from time to time by resolution of the Board of Directors. Any meeting, regular or special, may be held by conference telephone or similar communications equipment, so long as all Directors participating in such meeting can hear one another. All regular and special meetings of the Board shall, in all respects, conform to provisions of the Ralph M. Brown Act (the "Brown Act"); provided, however, failure to comply with such requirements, in and of itself, shall not modify or invalidate any corporate action. Regular and special meetings of the Board shall be called, noticed and held in accordance with the provisions of section 54956 of the Brown Act; provided, however, failure to comply with such requirements, in and of itself, shall not modify or invalidate any corporate action.

SECTION 8. ANNUAL MEETINGS

The annual meeting of the Directors shall be held in June on such day and at such hour as shall be fixed by the Board of Directors. At the annual meeting, Directors shall be elected by the Board of Directors.

SECTION 9. SPECIAL MEETINGS

Special meetings of the Board of Directors may be called by the President, and Secretary, and such meetings shall be held at the place, within or without the State of California, designated by the persons calling the meetings, and in the absence of such designation, at the principal office of the Corporation.

SECTION 10. NOTICE BY MEETINGS

Regular meetings of the Board may be held without notice. Special meetings of the Board shall be held upon four (4) days' notice by first-class mail or forty-eight (48) hours' notice delivered personally or by telephone or electronic mail. If sent by mail or electronic mail, the notice shall be deemed to be delivered on its deposit in the mails or at the time it is sent via electronic mail. Such notices shall be addressed to each Director at his or her address as shown on the books of the Corporation. Notice of the time and place of holding an adjourned meeting need not be given to absent Directors if the time and place of the adjourned meeting are fixed at the meeting adjourned and if such adjourned meeting is held no more than twenty-four (24) hours from the time of the original meeting. Notice shall be given of any adjourned regular or special meeting to Directors absent from the original meeting if the adjourned meeting is held more than twenty-four (24) hours from the time of the original meeting.

SECTION 11. CONTENTS OF NOTICE

Notice of meetings not herein dispensed with shall specify the place, day and hour of the meeting. The purpose of any Board meeting need not be specified in the notice.

SECTION 12. WAIVER OF NOTICE AND CONSENT TO HOLDING MEETINGS

The transactions of any meeting of the Board, however called and noticed or wherever held, are as valid as though the meeting had been duly held after proper call and notice, provided a quorum, as hereinafter defined, is present and provided that either before or after the meeting each Director not present signs a waiver of notice, a consent to holding the meeting, or an approval of the minutes thereof. All such waivers, consents, or approvals, shall be filed with the corporate records or made a part of the minutes of the meeting.

SECTION 13. QUORUM FOR MEETINGS

A quorum shall consist of two Directors or one-third of the currently serving Directors, whichever is greater.

Except as otherwise provided in these Bylaws or in the Articles of Incorporation of this Corporation, no business shall be considered by the Board at any meeting at which a quorum, as hereinafter defined, is not present, and the only motion which the Chair shall entertain at such meeting is a motion to adjourn from time to time until the time fixed for the next regular meeting of the Board.

When a meeting is adjourned for lack of a quorum, it shall not be necessary to give any notice of the time and place of the adjourned meeting or of the business to be transacted at such meeting, other than by announcement at the meeting at which the adjournment is taken, except as provided in Section 10 of this article.

The Directors present at a duly called and held meeting at which a quorum is initially present may continue to do business notwithstanding the loss of a quorum at the meeting due to a withdrawal of Directors from the meeting, provided that any action thereafter taken must be

approved by the required quorum for such meeting or such greater percentage as may be required by law, or the Articles of Incorporation or Bylaws of this Corporation.

SECTION 14. MAJORITY ACTION AS BOARD ACTION

Every act or decision done or made by a majority of the Directors present at a meeting duly held at which a quorum is present is the act of the Board of Directors, unless the Articles of Incorporation or Bylaws of this Corporation, or provisions of the California Nonprofit Public Benefit Corporation Law, particularly those provisions relating to appointment of committees (Section 5212), approval of contracts or transactions in which a Director has a material financial interest (Section 5233) and indemnification of Directors (Section 5238e), require a greater percentage or different voting rules for approval of a matter by the Board.

SECTION 15. CONDUCT OF MEETINGS

Meeting of the Board of Directors shall be presided over by the Chairman of the Board, or, if no such person has been so designated or, in his or her absence, the President of the Corporation or, in his or her absence, by the Vice-President of the Corporation or, in the absence of each of these persons, by a Chairman chosen by a majority of the Directors present at the meeting. The Secretary of the Corporation shall act as Secretary of all meetings of the Board, provided that in his or her absence, the presiding officer shall appoint another person to act as Secretary of the meeting.

Meetings shall be governed by Roberts' Rules of Order, as such rules may be revised from time to time, insofar as such rules are not inconsistent with or in conflict with these Bylaws, with the Articles of Incorporation of this Corporation, or with provisions of law.

SECTION 16. ACTION BY UNANIMOUS WRITTEN CONSENT WITHOUT MEETING

To the extent such action is not inconsistent with any other law governing the Corporation, any action required or permitted to be taken by the Board of Directors under any provision of law may be taken without a meeting, if all members of the Board shall individually or collectively consent in writing (including electronic mail) to such action. For the purposes of this section only, "all members of the Board" shall not include any "interested Director" as defined in Section 5233 of the California Nonprofit Public Benefit Corporation Law. Such written consent or consents shall be filed with the minutes of the proceedings of the Board. Such action by written consent shall have the same force and effect as the unanimous vote of the Directors. Any certificate or other document filed under any provision of law which relates to action so taken shall state that the action was taken by unanimous written consent of the Board of Directors without a meeting and that the Bylaws of this Corporation authorize the Directors to so act, and such statement shall be prima facie evidence of such authority.

SECTION 17. VACANCIES

Vacancies on the Board of Directors shall exist (1) on the death, resignation or removal of any Director; provided, however, no NOVA Director may be removed by the Directors

without the approval of the NOVA Board, and (2) whenever the number of authorized Directors is increased. In addition, for any of the NOVA Directors, the resignation or removal of each individual from the NOVA Board shall be deemed to be an automatic removal or resignation from the Board (without further action of the applicable NOVA Director or the Directors).

Subject to the limitation on the removal of the NOVA Directors, set forth above, the Board of Directors may declare vacant the office of a Director who has been declared of unsound mind by a final order of court, or convicted of a felony, or been found by a final order of judgment of any court to have breached any duty under Section 5230 and following of the California Nonprofit Public Benefit Corporation Law.

Any Director may resign effective upon giving written notice to the Chairman of the Board, the President, the Secretary or the Board of Directors, unless the notice specifies a later time for the effectiveness of such resignation. No Director may resign if the Corporation would then be left without a duly elected Director or Directors in charge of its affairs, except upon notice to the Attorney General.

Vacancies on the Board shall be filled by the members of the NOVA Board, or in the event the NOVA Board does not exist, then vacancies shall be filled by the City Council.

A person elected to fill a vacancy as provided in this Section shall hold office until the next annual election of the Board of Directors or until his or her death, resignation or removal from office.

SECTION 18. NON-LIABILITY OF DIRECTORS

The Directors shall not be personally liable for the debts, liabilities, or other obligations of the Corporation.

SECTION 19. INDEMNIFICATION BY CORPORATION OF DIRECTORS, OFFICERS, EMPLOYEES AND OTHER AGENTS

To the extent that a person, who is, or was, a Director, officer, employee or other agent of this Corporation has been successful on the merits in defense of any civil, criminal, administrative or investigative proceeding brought to procure a judgment against such person by reason of the fact that he or she is, or was, an agent of the Corporation, or has been successful in defense of any claim, issue or matter, therein, such person shall be indemnified against expenses actually and reasonable incurred by the person in connection with such proceeding.

If such person either settles any such claim or sustains a judgment against him or her, then indemnification against expenses, judgments, fines, settlements and other amounts reasonably incurred in connection with such proceedings shall be provided by this Corporation but only to extent allowed by, and in accordance with the requirements of, Section 5238 of the California Nonprofit Public Benefit Corporation Law.

SECTION 20. INSURANCE FOR CORPORATE AGENTS

The Board of Directors may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of the Corporation (including a Director, officer, employee or other agent of the Corporation) against any liability other than for violation provisions of law relating to self-dealing (Section 5233 of the California Nonprofit Public Benefit Corporation Law) asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not the Corporation would have the power to indemnify the agent against such liability under the provisions of Section 5238 of the California Nonprofit Public Benefit Corporation Law.

ARTICLE 5. OFFICERS

SECTION 1. NUMBER OF OFFICERS

The officers of this Corporation shall be a President, a Secretary, and a chief financial officer who shall be designated the Treasurer. The Corporation may also have, as determined by the Board of Directors, a Chairman of the Board, one or more Vice-Presidents, Assistant Secretaries, Assistant Treasurers, or other officers. Any number of offices may be held by the same person except that neither the Secretary nor the Treasurer may serve as the President or Chairman of the Board.

SECTION 2. QUALIFICATION, ELECTION, AND TERM OF OFFICE

Any person may serve as officer of this Corporation. Officers shall be elected by the Board of Directors, at any time, and each officer shall hold office until he or she resigns or is removed or is otherwise disqualified to serve, or until his or her successor shall be elected and qualified, whichever occurs first.

SECTION 3. SUBORDINATE OFFICERS

The Board of Directors may appoint such other officers or agents as it may deem desirable, and such officers shall serve such terms, have such authority, and perform such duties as may be prescribed from time to time by the Board of Directors.

SECTION 4. REMOVAL AND RESIGNATION

Any officer may be removed, either with or without cause, by the Board of Directors, or by the NOVA Board or the City Council at any time. Any officer may resign at any time by giving written notice to the Board of Directors or to the President or Secretary of the Corporation. Any such resignation shall take effect at the date of the receipt of such notice or at any later date specified therein, and, unless otherwise specified there, the acceptance of such resignation shall not be necessary to make it effective. The above provisions of this Section shall be superseded by any conflicting terms of a contract which has been approved or ratified by the Board of Directors relating to the employment of any officer of the Corporation.

SECTION 5. VACANCIES

Any vacancy caused by the death, resignation, removal, disqualification, or otherwise, of any officer shall be filled by the NOVA Board, or if the NOVA Board does not exist, then by the City Council. In the event of a vacancy in any office other than that of President, such vacancy may be filled temporarily by appointment by the President until such time as the Board shall fill the vacancy. Vacancies occurring in offices of officers appointed at the discretion of the Board may or may not be filled as the Board shall determine, subject to the approval of the NOVA Board, or if the NOVA Board does not exist, then by the City Council.

SECTION 6. DUTIES OF PRESIDENT

The President shall be the chief executive officer of the Corporation and shall, subject to the control of the Board of Directors, supervise and control the affairs of the Corporation and the activities of the officers. He or she shall perform all duties incident to his or her office and such other duties as may be required by law, by the Articles of Incorporation of this Corporation, or by these Bylaws, or which may be prescribed from time to time by the Board of Directors. Unless another person is specifically appointed as Chairman of the Board of Directors, he or she shall preside at all meetings of the Board of Directors. If applicable, the President shall preside at all meetings of the members. Except as otherwise expressly provided by law, by the Articles of Incorporation, or by these Bylaws, he or she shall, in the name of the Corporation, execute such deeds, mortgages, bonds, contracts, checks, or other instruments which may from time to time be authorized by the Board of Directors.

SECTION 7. DUTIES OF VICE-PRESIDENT

In the absence of the President, or in the event of his or her inability or refusal to act, the Vice-President shall perform all the duties of the President, and when so acting shall have all the powers of, and be subject to all the restrictions on, the president. The Vice-President shall have other powers and perform such other duties as may be prescribed by law, by the Articles of Incorporation, or by these Bylaws, or as may be prescribed by the Board of Directors.

SECTION 8. DUTIES OF SECRETARY

The Secretary shall:

Certify and keep at the principal office of the Corporation the original, or a copy, of these Bylaws as amended or otherwise altered to date.

Keep at the principal office of the Corporation or at such other place as the Board may determine, a book of minutes of all meetings of the Directors, and, if applicable, meetings of committees of Directors, recording therein the time and place of holding, whether regular or special, how called, how notice thereof was given, the names of those present or represented at the meeting, and the proceedings thereof.

See that all notices are duly given in accordance with the provisions of these Bylaws or as required by law.

Be custodian of the records and of the seal of the Corporation and see that the seal is affixed to all duly executed documents, the execution of which on behalf of the Corporation under its seal is authorized by law or by these Bylaws.

Exhibit at all reasonable times to any Director of the Corporation, or to his or her agent or attorney, on request therefore, the Bylaws, and the minutes of the proceedings of the Directors of the Corporation.

In general, perform all duties incident to the office of Secretary and such other duties as may be required by law, by the Articles of Incorporation of this Corporation, or by these Bylaws, or which may be assigned to him or her from time to time by the Board of Directors.

SECTION 9. DUTIES OF TREASURER

Subject to the provisions of these Bylaws relating to the "Execution of Instruments, Deposits and Funds," the Treasurer shall:

Have charge and custody of, and be responsible for, all funds and securities of the Corporation, and deposit all such funds in the name of the Corporation in such banks, trust companies, or other depositories as shall be selected by the Board of Directors.

Receive, and give receipt for, monies due and payable to the Corporation from any source whatsoever.

Disburse or cause to be disbursed the funds of the Corporation as may be directed by the Board of Directors, taking proper vouchers for such disbursements.

Keep and maintain adequate and correct accounts of the Corporation's properties and business transactions, including accounts of its assets, liabilities, receipts, disbursements, gains and losses.

Exhibit at all reasonable times the books of account and financial records to any Director of the Corporation, or to his or her agent or attorney, on request therefore.

Render to the President and Directors, whenever requested, an account of any or all of his or her transactions as Treasurer and of the financial condition of the Corporation.

Prepare, or cause to be prepared, and certify, or cause to be certified, the financial statements to be included in any required reports.

In general, perform all duties incident to the office of Treasurer and such other duties as may be required by law, by the Articles of Incorporation of the Corporation, or by these Bylaws, or which may be assigned to him or her from time to time by the Board of Directors.

SECTION 10. COMPENSATION

The salaries of the officers, if any, shall be fixed from time to time by resolution of the Board of Directors, and no officer shall be prevented from receiving such salary by reason of the fact that he or she is also a Director of the Corporation, provided, however, that such compensation paid a Director for serving as an officer of this Corporation shall only be allowed if permitted under the provisions of ARTICLE 4, Section 6, of these Bylaws. In all cases, any salaries received by officers of this Corporation shall be reasonable and given in return for services actually rendered the Corporation which relate to the performance of the charitable or public purposes of this Corporation.

ARTICLE 6. COMMITTEES

SECTION 1. EXECUTIVE COMMITTEE

The Board of Directors may, by a majority vote of Directors then in office, designate two (2) or more of its members (who may also be serving as officers of this Corporation) to constitute an Executive Committee and delegate to such Committee any of the powers and authority of the Board in the management of the business and affairs of the Corporation, except with respect to:

- (a) The approval of any action, which, under law or the provision of these Bylaws, requires the approval of the members or of a majority of all the members.
- (b) The filling of vacancies on the Board or on any committee which has the authority of the Board.
- (c) The fixing of compensation of the Directors for serving on the Board or on any committee.
- (d) The amendment or repeal of Bylaws or the adoption of new Bylaws.
- (e) The amendment or repeal of any resolution of the Board which by its express terms is not so amendable or repealable.
- (f) The appointment of committees of the Board or members, thereof.
- (g) The approval of any transaction to which this Corporation is a party and in which one or more of the Directors has a material financial interest, except as expressly provided in Section 5233(d)93) of the California Nonprofit Public Benefit Corporation Law.

By a majority vote of its members then in office, the Board may at any time revoke or modify any or all of the authority so delegated, increase or decrease but not below two (2) the number of its members, and fill vacancies therein from the members of the Board. The committee shall keep regular minutes of its proceedings, cause them to be filed with the corporate records, and report the same to the Board from time to time as the Board may require.

SECTION 2. OTHER COMMITTEES

The Corporation shall have such other committees as may from time to time be designated by resolution of the Board of Directors. Such other committees may consist of persons who are not also members of the Board. These additional committees shall act in an advisory capacity only to the Board and shall be clearly titled as "advisory" committees.

SECTION 3. MEETINGS AND ACTION OF COMMITTEES

Meetings and action of committees shall be governed by, noticed, held and taken in accordance with the provisions of these Bylaws concerning meetings of the Board of Directors, with such changes in the context of such Bylaw provisions as are necessary to substitute the committee and its members for the Board of Directors and its members, except that the time for regular meetings of committees may be fixed by resolution of the Board of Directors or by the committee. The time for special meetings of committees may also be fixed by the Board of Directors. The Board of Directors may also adopt rules and regulations pertaining to the conduct of meetings of committees to the extent that such rules and regulations are not inconsistent with the provisions of these Bylaws.

ARTICLE 7. EXECUTION OF INSTRUMENTS, DEPOSITS AND FUNDS

SECTION 1. EXECUTION OF INSTRUMENTS

The Board of Directors, except as otherwise provided in these Bylaws, may by resolution authorize any officer or agent of the Corporation to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances. Unless so authorized, no officer, agent, or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable monetarily for any purpose or in any amount.

SECTION 2. CHECKS AND NOTES

Except as otherwise specifically determined by resolution of the Board of Directors, or as otherwise required by law, checks, drafts, promissory notes, orders for the payment of money, and other evidence of indebtedness of the Corporation shall be approved by, or approval delegated by, the Treasurer.

SECTION 3. DEPOSITS

All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies, or other depositories as the Board of Directors may select.

SECTION 4. GIFTS

The Board of Directors may accept on behalf of the Corporation any contribution, gift, bequest, or devise for the charitable or public purposes of this Corporation.

ARTICLE 8. CORPORATE RECORDS, REPORTS AND SEAL

SECTION 1. MAINTENANCE OF CORPORATE RECORDS

The Corporation shall keep at its principal office in the State of California:

- (a) Minutes of all meetings of Directors, and committees of the Board, indicating the time and place of holding such meetings, whether regular or special, how called, the notice given, and the names of those present and the proceedings thereof.
- (b) Adequate and correct books and records of account, including accounts of its properties and business transactions and accounts of its assets, liabilities, receipts, disbursements, gains and losses.
- (c) A copy of the Corporation's Articles of Incorporation and Bylaws as amended to date, which shall be open to inspection by the Directors, if any, of the Corporation at all reasonable times during office hours.

SECTION 2. CORPORATE SEAL

The Board of Directors may adopt, use, and at will alter, a corporate seal. Such seal shall be kept at the principal office of the Corporation. Failure to affix the seal to corporate instruments, however, shall not affect the validity of any such instrument.

SECTION 3. DIRECTORS' INSPECTION RIGHTS

Every Director shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the Corporation.

SECTION 4. RIGHT TO COPY AND MAKE EXTRACTS

Any inspection under the provisions of this Article may be made in person or by agent or attorney and the right to inspection includes the right to copy and make extracts.

SECTION 5. ANNUAL REPORT

The Board shall cause an annual report to be furnished not later than one hundred and twenty (120) days after the close of the Corporation's fiscal year to all Directors of the Corporation, which report shall contain the following information in appropriate detail:

- (a) The assets and liabilities, including the trust funds, of the Corporation as of the end of the fiscal year.

- (b) The principal changes in assets and liabilities, including trust funds, during the fiscal year.
- (c) The revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes, for the fiscal year.
- (d) The expenses or disbursements of the Corporation, for both general and restricted purposes, during the fiscal year.
- (e) Any information required by Section 6 of this Article.

The annual report shall be accompanied by any report thereon of independent accountants, or, if there is no such report, the certificate of an authorized officer of the Corporation that such statements were prepared without audit from the books and records of the Corporation.

SECTION 6. ANNUAL STATEMENT OF SPECIFIC TRANSACTIONS TO MEMBERS

This Corporation shall mail or deliver to all directors a statement within one hundred and twenty (120) days after the close of its fiscal year which briefly describes the amount and circumstances of any indemnification or transaction of the following kind:

- (a) Any transaction in which the Corporation, or its parent or its subsidiary was a party, and in which either of the following had a direct or indirect material financial interest:
 - (1) Any director or officer of the Corporation, or its parent or subsidiary (a mere common directorship shall not be considered a material financial interest); or
 - (2) Any holder of more than ten percent (10%) of the voting power of the Corporation, its parent or its subsidiary.

The above statement need only be provided with respect to a transaction during the previous fiscal year involving more than FIFTY THOUSAND DOLLARS (\$50,000) or which was one of a number of transactions with the same person involving, in the aggregate, more than FIFTY THOUSAND DOLLARS (\$50,000).

Similarly, the statement need only be provided with respect to indemnifications or advances aggregating more than TEN THOUSAND DOLLARS (\$10,000) paid during the previous fiscal year to any Director or officer, except that no such statement need be made if such indemnification was approved by the Directors pursuant to Section 5238(e)(1) of the California Nonprofit Public Benefit Corporation Law.

Any statement required by this Section shall briefly describe the names of the interested persons involved in such transactions, stating each person's relationship to the Corporation, the nature of such person's interest in the transaction and, where practical, the amount of such

interest; provided, that in the case of a transaction with a partnership of which such person is a partner, only the interest of the partnership need be stated.

ARTICLE 9. FISCAL YEAR

SECTION 1. FISCAL YEAR OF THE CORPORATION

The fiscal year of the Corporation shall begin on the first day of July and end on the last day of June in each year.

ARTICLE 10. BYLAWS

SECTION 1. AMENDMENT

Subject to any provision of law applicable to the amendment of Bylaws of public benefit nonprofit corporations, these Bylaws, or any of them, may be altered, amended, or repealed and new Bylaws adopted as by the Board; provided however, any amendment to these Bylaws are subject to the approval by the NOVA Board, or in the event the NOVA Board does not exist, the approval by the City Council, or the City Manager of the City.

ARTICLE 11. AMENDMENT OF ARTICLES

SECTION 1. AMENDMENT OF ARTICLES

Any amendment of the Articles of Incorporation may be adopted by the approval of the Board of Directors; provided however, any amendment to these Bylaws are subject to the approval by the NOVA Board, or in the event the NOVA Board does not exist, the approval by the City Council, or the City Manager of the City.

CERTIFICATE

I, the undersigned, do hereby certify:

- (1) That I am the duly elected and acting Secretary of the Board of Directors (the "Board") of NOVAworksFoundation, a California nonprofit public benefit corporation (the "Corporation");
- (2) That the foregoing Amended and Restated Bylaws, comprising fourteen (14) pages, constitute the Amended and Restated Bylaws of the Corporation as duly ratified by action of the Board at a duly constituted meeting held on _____, 2019; and
- (3) That the foregoing Amended and Restated Bylaws amend and restate all bylaws, as amended, of the Corporation previously adopted by the Board.

IN WITNESS THEREOF, I have hereunto subscribed my name, this _____ day of _____, 2019.

Kris Stadelman, Secretary

EXHIBIT C

CERTIFICATE OF SECOND AMENDED & RESTATED
ARTICLES OF INCORPORATION
OF
NOVAWORKS FOUNDATION
A California Nonprofit Public Benefit Corporation

The undersigned certify that:

1. They are the president and secretary, respectively, of NOVAworks Foundation, a California nonprofit public benefit corporation (the "Corporation").
2. The Articles of Incorporation of the Corporation are amended and restated to read in their entirety as follows:

I. NAME

The name of the corporation is NOVAworks Foundation (the "Corporation").

II. PURPOSE

(a) This Corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the California Nonprofit Public Benefit Corporation Law for charitable purposes. The general purpose of this Corporation is to have and exercise all rights and powers conferred on nonprofit corporations under the laws of California, provided that this Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the primary purposes of this Corporation.

(b) The specific charitable and public purposes for which the Corporation is organized are to benefit and support, in accordance with Section 509(a)(3) of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code"), the City of Sunnyvale, California, a municipal corporation (the "City"), and the purposes of the City by: (1) providing, developing, and implementing employment and job training programs for City residents, and residents within the service area of the NOVA Workforce Board established pursuant to the Workforce Innovation and Opportunity Act (the "Service Area"); (2) developing innovative programs that advance economic sustainability for workers in transition and for new entrants to the labor market; and (3) lessening the burden of the City and other local governments within the Service Area by providing and expanding economic and employment opportunities in the City and the Service Area.

III. AGENT OF SERVICE

Agent for Service intentionally left blank pursuant to Corporations Code §5819.

IV. DEDICATION AND DISPOSITION

(a) The property of this Corporation is irrevocably dedicated to charitable purposes and no part of the net income or assets of this Corporation shall ever inure to the benefit of any director, officer, or member of this Corporation or to the benefit of any private individual.

(b) Upon the winding up and dissolution of this Corporation, and after paying or adequately providing for the debts and obligations of the Corporation, the remaining assets shall be distributed to the City, or a nonprofit fund, foundation or corporation that is organized and operated exclusively for charitable purposes, and which has established and maintained its tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, or the corresponding provision of any future Internal Revenue Law.

V. LIMITATION OF CORPORATE ACTIVITIES

(a) This Corporation is organized and operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code. Notwithstanding any other provision of these Articles, the Corporation shall not carry on any activities not permitted to be carried on by: (i) a corporation exempt from federal income tax under Section 501 (c)(3) of the Internal Revenue Code, or the corresponding provision of any future United States Internal Revenue Law; or (ii) by a corporation, contributions to which are deductible under Section 170 of the Internal Revenue Code, or the corresponding provisions of any other United States Internal Revenue Law.

(b) No substantial part of the activities of this Corporation shall consist of lobbying or propaganda, or otherwise -attempting to influence legislation, except as provided in Section 501 (h) of the Internal Revenue Code, and this Corporation shall not participate in or interfere in (including publishing or distributing statements) any political campaign on behalf of any candidate for public office.

VI. DIRECTORS

The number of directors and the manner in which directors shall be chosen and removed from office, their qualifications, powers, duties, term of office, the manner of filling vacancies on the board of directors, and the manner of calling and holding meetings of directors shall be as stated in the bylaws; provided, however, the directors of the Corporation shall, at all times, be appointed by the City or the NOVA Workforce Board.

3. The foregoing amendment and restatement of Articles of Incorporation has been duly approved by the Board of Directors of the Corporation.

4. The Corporation has no members.

5. This Certificate may be executed in counterparts.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge and that this Declaration was executed on _____, 2019, at Sunnyvale, California.

By: Poncho Guevara, President

By: Kris Stadelman, Secretary