

Original to:

_____ City Clerk
_____ NOVA
_____ JobTrain

AGREEMENT BETWEEN
CITY OF SUNNYVALE AND JOBTAIN
FOR YOUTH WORKFORCE DEVELOPMENT SERVICES

This Agreement is made on the ____ day of June, 2017 between the City of Sunnyvale, a California municipal corporation (hereinafter referred to as "City"), on behalf of the NOVA Workforce Board, and **JobTrain**, a 501(c)(3) nonprofit educational and training institution (hereinafter referred to as "Subrecipient" or "JobTrain").

Whereas, City has applied for and been granted funds from the State of California to provide workforce development services to youth eligible under the Workforce Innovation and Opportunity Act Title I; and

Whereas, under this Agreement, Subrecipient is participating in the operation of such youth services as a subrecipient of funds; and

Whereas, City and Subrecipient are required to execute an Agreement wherein they agree to adhere to and comply with the conditions and requirements established for use of the funds of this grant;

Now, therefore, it is agreed:

1. Terms and Conditions: Subrecipient agrees to provide employment and training services and to comply with other requirements in accordance with the following:

- (a) Program Design and Standards – Exhibit A;
- (b) Special Provisions – Exhibit B;
- (c) Assurances and Certifications – Exhibit C;

- (d) Budget and Method of Payment – Exhibit D;
- (e) Request for Payment – Exhibit E; and
- (f) State of California and Department of Labor guidelines, as they now exist are or hereinafter amended.

The above-referenced Attachments and Exhibits are incorporated by reference as though fully set forth herein.

- 2. Term of Agreement: July 1, 2017 through June 30, 2018
- 3. Funding Limit: \$525,000
- 4. Agreement Number: 001-301-18
- 5. State of California Subgrant No.: TBD
- 6. CFDA #: 17.259

The parties, by and through their authorized representatives as indicated below, hereby acknowledge and agree to the terms and conditions of this **Agreement**.

CITY OF SUNNYVALE**JOBTRAIN**

BY: _____

BY: _____

NAME: **Deanna J. Santana**NAME: **Steven Schmidbauer**TITLE: **City Manager**TITLE: **Interim Executive Director**

PROGRAM DESIGN AND STANDARDS

I. PROGRAM DESIGN

A. **PROJECT OVERVIEW:** The following is a programmatic description of what will be accomplished during the contract period.

The Workforce Innovation and Opportunity Act (WIOA) affirms the Department of Labor's commitment to providing high quality services for youth and young adults beginning with career exploration and guidance, continued support for educational attainment, opportunities for skills training in in-demand industries and occupations, and culminating with a good job along a career pathway or enrollment in post-secondary education.

Per WIOA, the design framework services of local youth programs must provide an objective assessment of the academic and occupational skill levels and service needs of each participant, including a review of basic skills, occupational skills, prior work experience, employability, interests, aptitudes (including interests and aptitudes for nontraditional jobs), supportive service needs, and developmental needs, for the purpose of identifying appropriate services and career pathways for participants and informing the individual service strategy.

Youth programs must provide activities leading to the attainment of a secondary school diploma or its recognized equivalent, or a recognized postsecondary credential; preparation for postsecondary educational and training opportunities; strong linkages between academic instruction and occupational education that lead to the attainment of recognized postsecondary credentials; preparation for unsubsidized employment opportunities, in appropriate cases; and effective connections to employers, including small employers, in in-demand industry sectors and occupations of the local and regional labor markets.

This Agreement is to operate a WIOA Title I Youth program to serve WIOA-eligible out-of-school youth ages 16–24, with a focus on those residing or attending school in San Mateo County. In-school youth carried in from the PY 16-17 Agreement may also be served.

Eligibility

Out-of-School Youth

An out-of-school youth (OSY) is an individual who is: (a) Not attending any school (as defined under State law); (b) Not younger than 16 or older than age 24 at time of enrollment; and (c) One or more of the following:

- (1) A school dropout
- (2) A youth who is within the age of compulsory school attendance, but has not attended school for at least the most recent complete school year calendar quarter.
- (3) A recipient of a secondary school diploma or its recognized equivalent who is a low-income individual and is either basic skills deficient or an English language learner.
- (4) An individual who is subject to the juvenile or adult justice system.

- (5) A homeless individual, a runaway, in foster care or has aged out of the foster care system.
- (6) An individual who is pregnant or parenting.
- (7) An individual with a disability.
- (8) A low-income individual who requires additional assistance to enter or complete an educational program or to secure or hold employment. (WIOA secs. 3(46) and 129(a)(1)(B))
- (9) Other barriers as defined in NOVA's *WIOA Eligibility Technical Assistance Guide*.

JobTrain is responsible for the recruitment of sufficient numbers of eligible youth to meet its enrollment obligations. JobTrain files will be reviewed and approved by NOVA staff to ensure that eligibility has been completed according to WIOA regulations.

B. SCOPE OF SERVICES

Subrecipient is responsible for providing comprehensive services and activities to participants. In accordance with WIOA regulations, services and activities must include but are not limited to the following:

- Youth outreach/recruitment
- Objective assessment of the academic and occupational skill levels and service needs of each participant
- One-on-one case management, including development and ongoing implementation of an individualized service strategy directly linked to one or more of the performance indicators.
- Activities leading to the attainment of a secondary school diploma or its recognized equivalent, or a recognized postsecondary credential.
- Preparation for postsecondary educational and training opportunities.
- Strong linkages between academic instruction and occupational education that lead to the attainment of recognized postsecondary credentials.
- Preparation for unsubsidized employment opportunities, in appropriate cases.
- Effective connections to employers, including small employers, in in-demand industry sectors and occupations of the local and regional labor markets.
- Follow-up services – Follow-up services must be provided for a minimum of 12 months following a youth's exit from the program to help ensure the youth is successful in employment and/or post-secondary education and training. The types of services provided and the duration of services must be determined based on the needs of the individual and therefore, the type and intensity of follow-up services may differ for each participant. However, follow-up services must include more than only a contact attempted or made for securing documentation in order to report a performance outcome.
- Maintenance of records, data entry and report preparation as required in the approved WIOA automated case management system.

Required Program Elements

Additionally, WIOA regulations require that 14 specific program elements be readily available to eligible youth. JobTrain will address the elements as shown in Exhibit A, Attachment 1. TEGL 21-16, *Third Workforce Innovation and Opportunity Act (WIOA) Title I Youth Formula Program Guidance*, provides extensive guidance relative to each of the 14 required elements and will be used as a reference to determine compliance.

Services Required for Specific Populations

In addition to services listed above which Subrecipient will provide to ALL youth, the following services will be provided by Subrecipient for the populations defined below.

Out-of-School Youth

It is required that a minimum of 97 percent of contract expenditures be for costs related to serving out-of-school youth (see Exhibit D, Budget). Note that it is expected that expenditures reported for serving out-of-school youth are reasonable given the proportion of out-of-school youth served.

Services for Out-of-School Youth will include the following:

- Coordination of a comprehensive service plan to support dropouts in re-engaging in the process of attaining their high school diploma or equivalent.
- Development of an educational and/or career development plan, leading toward economic self-sufficiency.
- Broad-spectrum career exploration, incorporating introduction to in-demand careers and career pathways, and educational options, including linkages to career technical education and apprenticeship programs.
- Job search skills curriculum, including networking, interviewing, resume writing and financial literacy.
- Instruction on the soft skills and attitudes necessary to retain employment.
- Opportunities for participation in hands-on work-based learning opportunities, such as internships, subsidized work experience and job shadowing.

In-School Youth

Services for In-School Youth (carry-ins from previous contract only) will include the following:

- Coordination of a comprehensive service plan to support youth in attaining their high school diploma or equivalent.
- Broad-spectrum career exploration, incorporating introduction to in-demand careers and career pathways, and educational options, including public sector career development and linkages to career technical education and apprenticeship programs.

- Development of a post high school educational and career development plan.
- Job search skills curriculum, including networking, interviewing, resume writing and financial literacy.
- Instruction on the soft skills and attitudes necessary to retain employment.
- Initiation of new, and maintenance of existing active relationships with high schools across the service delivery area, including presence on campuses for the purpose of outreach, recruitment and providing coordinated services to enrolled youth. May include giving presentations and coordinating/assisting with on-campus job fairs.
- Opportunities for participation in hands-on work-based learning opportunities, such as internships, subsidized work experience and job shadowing.

Work-Based Learning

This Agreement requires that **not less than 25 percent of contracted funds be spent on activities supporting paid and unpaid work experience** that have as a component academic and occupational education. This may include summer employment and other employment opportunities available throughout the year such as pre-apprenticeship programs, internships, job shadowing and on the job training opportunities. According to Training Employment and Guidance Letter 23-14, [*WIOA Youth Program Transition*](#), “Program expenditures on the work experience program element include wages as well as staffing costs for the development and management of work experience.” These work-based learning strategies must serve as a next step in career development, whether the desired outcome is employment or enrollment in post-secondary education or advanced training.

Youth Incentives

WIOA allows for payments of incentives to youth who have achieved established goals as a result of program participation. Subrecipient will adhere to NOVA’s *WIOA Youth Incentives Policy* for criteria for award of incentives.

B. PROJECT RESULTS:

JobTrain will enroll 64 new out-of-school youth over the term of this Agreement, and will also continue to serve an estimated 6 in-school and 38 out-of-school youth carried in from the PY 16-17 Agreement. The participant plan and performance goals and outcomes that apply to this Agreement are included in Exhibit A, Attachment 2.

JobTrain shall endeavor to meet the goals to the best of its ability. NOVA shall review progress toward goals on a regular basis, and inadequate progress may result in reduced funding and/or the termination of this Agreement, as specified in Special Provisions Section 17.

NOVA will perform on-site fiscal and performance monitoring of Subrecipient at least once during the term of this Agreement, in accordance with NOVA’s *Monitoring of WIOA*

Programs policy and procedures. Any items noted for corrective action must be addressed on a timely basis, as per the policy. NOVA will provide ongoing technical assistance as necessary to accomplish the goals of this project.

II. REPORTING AND DATA COLLECTION REQUIREMENTS

A. JobTrain Responsibilities

Records will be entered and maintained in NOVA's Information Management System known as CISRS. JobTrain staff will enter the following data in CISRS:

- 1) Incomplete WIOA applications
- 2) Completed WIOA applications
- 3) Universal Services activity codes
- 4) Universal case notes
- 5) Service case notes
- 6) No service case notes

On a weekly basis, JobTrain staff will provide all original eligibility documents for each completed application to NOVA for review and approval. NOVA will keep these files on site. After NOVA has approved an applicant's eligibility, JobTrain staff will enter service notes and provide NOVA with dates of WIOA services provided. NOVA staff will enroll the applicant into a WIOA grant code and the activities documented by JobTrain.

Upon completion of services, JobTrain will forward a participant's working file to NOVA. JobTrain will provide NOVA with a monthly performance narrative in a mutually agreed-upon format.

B. NOVA Responsibilities

NOVA will review all eligibility documents and approve enrollments. NOVA staff will complete all entries into CISRS other than those indicated above, including:

- 1) Enrollment into grant code(s)
- 2) Career Services activity codes
- 3) Closures

NOVA will maintain the original MIS/eligibility file for each participant.

III. PROGRAM COORDINATION

1. NOVA's Manager of Job Seeker Services, or her designee, shall be the Program Manager for the City 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 Program Manager.

2. Subrecipient shall assign a Coordinator who shall have overall responsibility for the progress and execution of this Agreement. Should circumstances or conditions subsequent to the execution of this Agreement require a substitute Coordinator, Subrecipient shall notify City immediately of such occurrence. Program Manager and Subrecipient staff will fully cooperate with City relating to this Agreement.

IV. NOTICES

All notices or correspondence required or contemplated by this Agreement shall be sent to the respective parties at the following addresses:

City: Cindy Stahl, Manager of Job Seeker Services
NOVA
505 West Olive Ave., Suite 550
Sunnyvale, CA 94086
Telephone: (408) 730-7236
Email: cstahl@novaworks.org

Subrecipient: Steven Schmidbauer, Interim Executive Director
JobTrain
1200 O'Brien Drive
Menlo Park, CA 94025
Telephone: (650) 330-6499
Email: sschmidbauer@jobtrainworks.org

Nothing contained herein shall be construed to prohibit the parties from communicating by the most expedient method available, whether by commercial courier, facsimile, or by electronic means. However, for purposes of providing official notification and/or documentation as required in this Agreement, the sending party assumes full responsibility and the burden of proof for the completed transmission if the documents or notification are sent by means other than certified, first class mail through the United States Postal Service.

WIOA 14 Elements Service Delivery Plan

If Subrecipient does not directly provide the services listed, it must demonstrate the ability to make the services available through seamless referrals to appropriate providers of such services. Subrecipient will have primary responsibility for coordinating the full continuum of services for each participant.

ELEMENT	Indicate YES or NO if your agency directly provides this element	Briefly describe your plans for this service. <i>What will be included and how will it be provided? If your agency is NOT directly providing this element, identify with whom you will partner to provide this required element (i.e., name of organization, address, and contact person to confirm).</i>
1. Tutoring, student skills training, instruction and evidence-based dropout prevention and recovery strategies that lead to completion of the requirements for a secondary school diploma or its recognized equivalent (including a recognized certificate of attendance or similar document for individuals with disabilities) or for a recognized post-secondary credential	YES	In partnership with Sequoia Adult School, JobTrain has an Academic Learning Center (ALC), where students can receive one-on-one or small group academic instruction in ABE/ASE, which supports students who are basic skills deficient, achieve a 9 th grade level of mastery in reading and math. Instruction is provided by a GED instructor and/or trained volunteers on site at JobTrain. In addition, Sequoia supports Jobtrain's HSE (high school equivalency) program by assisting students in passing either the HiSET or GED tests.
2. Alternative secondary school services, or dropout recovery services, as appropriate	YES	JobTrain offers one-on-one, small group support, and/or computer-based option in: <ul style="list-style-type: none"> • Day and evening GED preparation • High School Equivalency (HSE) diploma • ASE/ABE programs • ESL classes (Intermediate level) • Basic Computer Literacy (Eng & Span options) A common referral form is used to refer students to GED, HSE, and ASE/ABE programs, which is provided by Sequoia Adult School.

ELEMENT	Indicate YES or NO if your agency directly provides this element	Briefly describe your plans for this service. <i>What will be included and how will it be provided? If your agency is NOT directly providing this element, identify with whom you will partner to provide this required element (i.e., name of organization, address, and contact person to confirm).</i>
3. Paid and unpaid work experiences that have academic and occupational education as a component of the work experience, which may include the following types of work experiences: summer employment opportunities and other employment opportunities available through the school year; pre-apprenticeship programs; internships and job shadowing; and on-the-job training opportunities;	YES	<p>JobTrain has a year-round Work Experience program with a full time case manager, where youth are placed into paid work experience with an emphasis on academic and career goals. Youth are also provided opportunities to be placed in unpaid externships/ internships, job shadowing, pre-apprenticeship program, and other on-the-job training opportunities with many of JobTrain’s employer partners.</p> <p>JobTrain also refers eligible participants to long-time partner One East Palo Alto, a NPO who offers a 6-week Sponsored Employment program over the summer.</p>

ELEMENT	Indicate YES or NO if your agency directly provides this element	Briefly describe your plans for this service. <i>What will be included and how will it be provided? If your agency is NOT directly providing this element, identify with whom you will partner to provide this required element (i.e., name of organization, address, and contact person to confirm).</i>
4. Occupational skill training, which includes priority consideration for training programs that lead to recognized post-secondary credentials that align with in-demand industry sectors or occupations in the local are involved	YES	<p>JobTrain provides seven full-time (12-17weeks), in-demand, vocational training courses in relevant industry sectors:</p> <ul style="list-style-type: none"> • Professional Health Care Worker • Medical Assistant • Web Technology Skills • Project Build: Carpenters Pre-Apprenticeship • Laborers Construction Fundamentals • Culinary Arts • Business Administration <p>A WASC-accredited school, students earn a certificate of completion from JobTrain. If JobTrain does not provide a training, then we will refer to an approved external provider.</p>
5. Education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster	YES	<p>JobTrain provides GED and HSE prep as well as basic skills brush-up (ABE/ASE) through a partnership with Sequoia Adult School. A student can enroll concurrently in a GED class while taking a vocational training course at JobTrain. JobTrain also refers students to partners Canada College and/or Sequoia Adult School. All students have access to ABE/ASE while they are enrolled in outside training courses.</p>

ELEMENT	Indicate YES or NO if your agency directly provides this element	Briefly describe your plans for this service. <i>What will be included and how will it be provided? If your agency is NOT directly providing this element, identify with whom you will partner to provide this required element (i.e., name of organization, address, and contact person to confirm).</i>
6. Leadership development opportunities, including community service and peer-centered activities encouraging responsibility and other positive social and civic behaviors	YES	Aside from JobTrain's Career Readiness series, JobTrain's youth counselors offer a series of Leadership workshops for ages up to 24 years, provided throughout the year based on need and interest levels. Topics range from Dealing with Stress and Work Etiquette to Public Speaking and Personal Branding. All workshops have an emphasis on civic responsibility and reinforcing positive social behavior.
7. Supportive services	YES	<p>JobTrain provides supportive services, such as financial help for transportation, exam fees, and work uniforms. JobTrain also has a Supportive Services Center on-site, where students can be referred for additional resources and information, and apply for public benefits such as CalFresh and Medi-Cal.</p> <p>JobTrain has a full-time Benefits and Resource Counselor and a strong partnership with San Mateo County Human Services Agency, to ensure clients are receiving their entitlement benefits.</p> <p>In addition, JobTrain partners with Community Legal Services in East Palo Alto (CLSEPA), who provide legal consultations around expungement, housing, and immigration help. A referral process is in place.</p>

ELEMENT	Indicate YES or NO if your agency directly provides this element	Briefly describe your plans for this service. <i>What will be included and how will it be provided? If your agency is NOT directly providing this element, identify with whom you will partner to provide this required element (i.e., name of organization, address, and contact person to confirm).</i>
8. Adult mentoring for a duration of at least 12 months that may occur both during and after program participation	YES	Embedded in its programs, JobTrain has a host of volunteers who provide mentorship and support for youth in need of a mentor. Adult volunteers meet with a youth quarterly with the goal of building trust, shadowing on the job, and/or other career/life guidance and support. Youth counselors help facilitate the pairing of mentor/mentee and check in quarterly to review progress and/or concerns. For additional mentorship options, JobTrain will also refer to local Boys & Girls Clubs and Move Up, a NPO for women who want to gain a path to economic independence.
9. Follow-up services for not less than 12 months after the completion of participation	YES	Follow-up services are available to all participants and embedded in JobTrain's programs. Counselors and job developers provide follow-up services to all their clients up to one year after exit. Some follow up services include, but are not limited to: referrals to community resources, tutoring, mentoring, tracking progress on the job, career development, education planning, etc.

ELEMENT	Indicate YES or NO if your agency directly provides this element	Briefly describe your plans for this service. <i>What will be included and how will it be provided? If your agency is NOT directly providing this element, identify with whom you will partner to provide this required element (i.e., name of organization, address, and contact person to confirm).</i>
10. Comprehensive guidance and counseling, which may include drug and alcohol abuse counseling, as well as referrals to counseling, as appropriate to the needs of the individual youth	YES	JobTrain counselors provide comprehensive guidance and counseling and make referrals to outside sources if needed. Some referral locations include: Kara, Free At Last, and San Mateo County Alcohol and Other Drug services. In addition, JobTrain has an onsite Wellness Center, staffed by credentialed and licensed clinicians, where youth are referred for emotional, mental, and social support.
11. Financial literacy and education	YES	JobTrain provides Career Readiness workshops that host corporate bank sponsors that provide financial literacy education throughout the year. In addition, youth counselors provide on-line tools to assess financial situations and offer budgeting assistance. For more personal attention, students are referred to partner San Mateo Credit Union for help with opening a bank account and other questions around credit.
12. Entrepreneurial skills training	NO	JobTrain partners with Renaissance Center, a NPO that helps individuals create sustainable new businesses, including help with writing business plans, accessing capital and other resources and long-term support.

ELEMENT	Indicate YES or NO if your agency directly provides this element	Briefly describe your plans for this service. <i>What will be included and how will it be provided? If your agency is NOT directly providing this element, identify with whom you will partner to provide this required element (i.e., name of organization, address, and contact person to confirm).</i>
13. Services that provide labor market and employment information about in-demand industry sectors or occupations available in the local area, such as career awareness, career counseling, and career exploration services	YES	<p>JobTrain’s trained counselors provide in-depth career analysis including counseling/coaching, career exploration and awareness, and assessment. Counselors have access to online assessment tools such as ONET, ProveIt!, and careeronestop.org. EDD is on site for additional employment services including workshops and advising.</p> <p>As part of WIOA orientation, all participants are required to register with CalJOBS and are provided explanations on services and resources CalJOBS has to offer. JobTrain also hosts a variety of job fairs across high-demand sectors, spearheaded by local employers.</p>
14. Activities that help youth prepare for and transition to post-secondary education and training	YES	<p>JobTrain partners with post-secondary institutions, such as Canada College and Sequoia Adult School, to establish career pathways and stackable credits. Students may gain these college credits in some of our training programs through articulation agreements between JobTrain and the post-secondary institutions.</p> <p>In addition, youth counselors provide comprehensive assistance to youth who want to go to college by helping youth apply for college, fill out FAFSA applications, search for scholarships, register for classes, and/or navigate the college system.</p>

Total Youth Participant Plan				
Organization Name: JobTrain				
TERM: 7/1/2017 - 6/30/2018				
I. Quarterly Participation (Cumulative)				
Quarter End Date (MM/YY)	9/17	12/17	3/18	6/18
A. Carry-in Participants	44	44	44	44
B. New Participants	16	30	46	64
C. Total Participants	60	74	90	108
D. Participants Exited	5	21	36	48
E. Participants Carried Out	55	53	54	60
II. Program Services - Total Participants to Receive the Following Services				
A. Youth Services	108			
B. Youth Work Experience	23			
C. Occupational Training	25			
III. Performance Goals		NOVA	Project	
A. Education or Employment Rate 2nd Qtr		62%	62%	
B. Education or Employment Rate 4th Qtr		64%	64%	
C. Credential Attainment		52%	52%	

In School Youth (ISY) Participant Plan				
Organization Name: JobTrain				
TERM: 7/1/2017 - 6/30/2018				
I. Quarterly Participation (Cumulative)				
Quarter End Date (MM/YY)	9/17	12/17	3/18	6/18
A. Carry-in Participants	6	6	6	6
B. New Participants				
C. Total Participants	6	6	6	6
D. Participants Exited	-	3	6	6
E. Participants Carried Out	6	3	-	-
II. Program Services - Total Participants to Receive the Following Services				
A. Youth Services	6			
B. Youth Work Experience	0			
C. Occupational Training	0			

Out of School Youth (OSY) Participant Plan				
Organization Name: JobTrain				
TERM: 7/1/2017 - 6/30/2018				
I. Quarterly Participation (Cumulative)				
Quarter End Date (MM/YY)	9/17	12/17	3/18	6/18
A. Carry-in Participants	38	38	38	38
B. New Participants	16	30	46	64
C. Total Participants	54	68	84	102
D. Participants Exited	5	18	30	42
E. Participants Carried Out	49	50	54	60
II. Program Services - Total Participants to Receive the Following Services				
A. Youth Services	102			
B. Youth Work Experience	23			
C. Occupational Training	25			

SPECIAL PROVISIONS

S1 INSUFFICIENT FUNDING

In the event that the U.S. Department of Labor or the Governor of the State of California fails to provide sufficient funding for implementation of the entire services as set forth herein, the amount set forth in this Agreement shall be reduced and the program shall be reduced proportionately.

S2 ENTIRE AGREEMENT

This Agreement, its attachments and references cited herein fully express all understandings of the parties concerning the matters covered herein. No addition to or alteration of the terms of this Agreement, and no other Agreements of the parties or their officers, agents, or employees, shall be valid unless made in the form of a written amendment to this Agreement duly approved and executed by the parties' authorized representative(s).

S3 PROCEDURE TO MODIFY THE AGREEMENT

Subrecipient shall submit its request for changes in writing to the City's Program Manager as identified in Exhibit A. Such modification requests must include a summary of the proposed revisions and justification for each.

S4 INDEMNIFICATION

Subrecipient shall defend, indemnify, and hold harmless City, its officers, employees, agents and volunteers from and against any claims, losses, injuries, suits, actions or judgments and from any and all liability for any and all claims, losses, injuries, suits, actions or judgments filed or brought by any and all persons because of or arising or resulting from, or in connection with any negligent act, omission or willful misconduct by Subrecipient, or its officers, employees, agents or representatives. Subrecipient further agrees to reimburse City for all costs, reasonable attorneys' fees, expenses and liabilities incurred in any legal action arising out of any obligation of Subrecipient to be performed under this Agreement or arising from any negligence or willful misconduct of Subrecipient, its officers, employees, agents or representatives. Nothing in this section shall be construed to prohibit apportionment of liability, damages and related defense costs as between Subrecipient and City for third-party claims in accordance with applicable provisions of California law. City shall notify Subrecipient of any third-party claims related to this Agreement within thirty (30) days of receipt, however, failure to provide such notice shall not operate to waive Subrecipient's obligations under this Section.

S5 LEGAL RELATIONSHIP

- 5.1 It is understood and agreed that Subrecipient is an independent contractor and that no relationship of employer-employee exists between the parties hereto; that Subrecipient shall not be entitled to any benefits available to employees of City; that City is not required to make any deductions from the compensation payable to Subrecipient under the provisions of this Agreement; that as an independent contractor, Subrecipient thereby holds City harmless from any and all claims that may be made against City based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement. It is further understood and agreed that Subrecipient has no authority to act for or on behalf of City other than acting as Subrecipient in carrying out and performing the terms of the Agreement.
- 5.2 The Federal Government and the State of California are not parties hereto and no legal liability on the part of the federal or state government is implied under the terms and conditions of this Agreement; any liabilities, legal actions or disputes as may arise under this Agreement are between the City and Subrecipient.
- 5.3 All powers not explicitly vested in the Subrecipient by this Agreement remain with City.
- 5.4 Subrecipient, without additional expense to City, shall be responsible for obtaining any necessary licenses and permits, and for complying with any applicable federal, (including OSHA) state and municipal laws, codes and regulations. Subrecipient shall be similarly responsible for all damages to persons or property that occur as a result of Subrecipient fault or negligence. Subrecipient shall take adequate precautions to protect the work, the workers, the public, and the property of others. Failure to do so shall place Subrecipient in default of the terms of this Agreement.
- 5.5 If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby, if such remainder would then continue to conform to the terms and requirements of applicable law.
- 5.6 In no event shall any payment by City hereunder constitute or be construed to be a waiver by City of any breach of covenants or conditions of this Agreement or any default which may then exist on the part of the Subrecipient. The making of any such payment shall not prejudice any right or remedy available to City with respect to such breach or default.
- 5.7 In no event shall a waiver by City of any of the provisions herein invalidate the remainder of the Agreement.

S6 CONFLICT OF INTEREST

Subrecipient shall maintain a written code of standards. The Subrecipient will insure that no actual or apparent conflict of interest shall occur relative to the performance of this Agreement.

S7 PERSONNEL

- 7.1 Subrecipient represents that it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or be deemed thereby to have any contractual relationship with City.
- 7.2 All of the services hereunder will be performed by Subrecipient or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized under State and local law to perform such services.

S8 INTELLECTUAL PROPERTY

8.1 Federal Funding

If this Agreement is funded in whole or in part by the federal government, City may acquire and maintain the intellectual property rights, title, and ownership which result directly or indirectly from the Agreement, except as provided in 37 CFR Part 401.14. However, pursuant to *Uniform Guidance* 2 CFR Part 200 and DOL Exceptions 2 CFR Part 2900, the federal government shall have a royalty-free, non-exclusive, irrevocable, paid-up license throughout the world to use, duplicate, or dispose of such intellectual property in any manner for governmental purposes and to permit others to do so.

8.2 Ownership

a. Except where City has agreed in a signed writing to accept a license, City shall be and remain without additional compensation, the sole owner of any and all rights, title and interest in all intellectual property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by Subrecipient or City and which result directly or indirectly from this Agreement.

b. For the purposes of this Agreement, intellectual property means recognized protectable rights and interest such as: patents (whether or not issued), copyrights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, oral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, goodwill, any data or information maintained, collected or stored in the ordinary course of business by City, and all other legal rights protecting intangible proprietary information as may exist now and/or hereafter come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.

(1) For the purposes of the definition of intellectual property, "works" means all literary works, writings and printer matter including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sounds recordings, tapes, educational materials, interactive videos, computer software and any other materials or products created, produced, conceptualized and fixed in a tangible medium of

expression. It includes preliminary and final products and any materials and information developed for the purpose of producing those final products. "Works" does not include article submitted to peer review or reference journals or independent research projects.

- c. In the performance of this Agreement, Subrecipient may exercise and utilize certain of its intellectual property in existence prior to the effective date of this Agreement. In addition, under this Agreement, Subrecipient may access and utilize certain of City's intellectual property in existence prior to the effective date of this Agreement. Except as otherwise set forth herein, Subrecipient shall now use any of City's intellectual property now existing or hereafter existing for any purposes without the prior written permission of City. Except as otherwise set forth herein, neither the Subrecipient nor City shall give any ownership interest or rights to its intellectual property to the other party. If, during the term of this Agreement, Subrecipient accesses any third-party intellectual property that is licensed to City, Subrecipient agrees to abide by all license and confidentiality restrictions applicable to City in the third party's license agreement.
- d. Subrecipient agrees to cooperate with City in establishing or maintaining City's exclusive rights in the intellectual property and to assure City's sole rights against third parties with respect to the intellectual property. If the Subrecipient enters into any agreements or subcontracts with other parties in order to perform this Agreement (other than for customized or on-the-job training), Subrecipient shall require the terms of the agreement(s) to include all intellectual property provisions of this Agreement.
- e. Subrecipient further agrees to assist and cooperate with City in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and enforce City's intellectual property rights and interests.

8.3 Retained Rights/License Rights

- a. Except for intellectual property made, conceived, derived from, or reduced to practice by Subrecipient or City and which result directly or indirectly from this Agreement, Subrecipient shall retain title to all of its intellectual property to the extent such intellectual property is in existence prior to the effective date of this Agreement. Subrecipient hereby grants to City, without additional compensation, a permanent, non-exclusive, royalty free, paid-up, worldwide, irrevocable, perpetual, non-terminable license to use, reproduce, manufacture, sell, offer to sell, import, export, modify, publicly and privately display/perform, distribute, and dispose of Subrecipient's intellectual property with the right to sublicense through multiple layers, for any purpose whatsoever, to the extent it is incorporated in the intellectual property as set forth herein.
- b. Nothing in this provision shall restrict, limit, or otherwise prevent Subrecipient from using any ideas, concepts, know-how, methodology or techniques related to its performance under this Agreement, provided that Subrecipient's use does not infringe the patent, copyright, trademark rights, license or other intellectual property rights of City or third party, or result in a breach or default of any provisions of this section of Agreement or result in a breach of any provisions of law relating to confidentiality.

8.4 Copyright

a. Subrecipient agrees that for purposes of copyright law, all works of authorship made by or on behalf of Subrecipient in connection with Subrecipient's performance of this Agreement shall be deemed "works made for hire." Subrecipient further agrees that the work of each person utilized by Subrecipient in connection with the performance of this Agreement will be a "work made for hire." Subrecipient shall enter into a written Agreement with any such person that: (i) all work performed for Subrecipient shall be deemed a "work made for hire" under the Copyright Act, and (ii) that person shall assign all right, title, and interest to City to any work product made, conceived, derived from, or reduced to practice by Subrecipient or City and which results directly or indirectly from this Agreement.

b. All materials, including but not limited to computer software and visual works or text, reproduced or distributed pursuant to this Agreement that include intellectual property made, conceived, derived from, or reduced to practice by Subrecipient or City and which result directly or indirectly from this Agreement may not be reproduced or disseminated without prior written permission from City.

8.5 Patent Rights

With respect to inventions made by Subrecipient in the performance of this Agreement, which did not result from research and development specifically included in Subrecipient's scope of work, Subrecipient hereby grants to City a license for devices or materials incorporating or made through the use of such inventions. If such inventions result from research and development work specifically included within the Subrecipient's scope of work, then Subrecipient agrees to assign to City, without additional compensation, all its right, title, and interest in and to such inventions and to assist City in securing United States and foreign patents with respect thereto.

8.6 Third-Party Intellectual Property

Except as provided herein, Subrecipient agrees that its performance of this Agreement shall not be dependent upon or include any intellectual property of Subrecipient or third party without first: 1) obtaining City's prior written approval; and 2) granting to obtaining for City, without additional compensation, a license of any of Subrecipient's or third-party's intellectual property in existence prior to the effective date of this Agreement. If such a license upon these terms is unattainable, and City determines that the intellectual property should be included in or is required for Subrecipient's performance of the Agreement, Subrecipient shall obtain a license under terms acceptable to City.

8.7 Warranties

a. Subrecipient represents and warrants that:

- 1) It has secured and will secure all rights and licenses necessary for its performance of this Agreement.
- 2) Neither Subrecipient's performance of this Agreement, nor the exercise by either party of the rights grant in this Agreement, nor any use, reproduction, manufacture, sale, offer to sell, import, export, modification, public and private display/performance, distribution, and disposition of the intellectual property made, conceived, derived from,

or reduced to practice by Subrecipient or City and which result directly or indirectly from this Agreement will infringe upon or violate any intellectual property right, non-disclosure obligation, or other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by any state, the United States, or any foreign country.

- 3) Neither Subrecipient's performance nor any part of its performance will violate the right of privacy of, or constitute a libel or slander against any person or entity.
 - 4) It has secured and will secure all rights and licenses necessary for intellectual property including but not limited to consents, waivers or releases from all authors of music or performances used, and talent (radio, televisions and motion picture talent), owners of any interest in and to real estate, site locations, property or props that may be used or shown.
 - 5) It has not granted and shall not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights grant to City in this Agreement.
 - 6) It has appropriate systems and controls in place to ensure that state and federal funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
 - 7) It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way Subrecipient's performance of this Agreement.
- b. City makes no warranty that the intellectual property resulting from this Agreement does not infringe upon any patent, trademark, copyright or the like now existing or subsequently issued.

8.8 Intellectual Property Indemnity

a. Subrecipient shall indemnify, defend and hold harmless City and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products ("indemnities") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with to any thereof), whether or not rightful, arising from any and all actions of claims by any third party or expenses related thereto (including but not limited to all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim action or proceeding commenced or threatened) to which any of the Indemnities may be subject, whether or not Subrecipient is a party to any pending or threatened litigation, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of Subrecipient pertaining to intellectual property; or (ii) any intellectual property infringement, or any other type of actual or alleged infringement claim, arising out of City's use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the intellectual property made, conceived, derived from, or reduced to practice by Subrecipient or City and which result directly or indirectly from this Agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that was issued after the effective date of this Agreement. City reserves the right to

participate in and/or control, at Subrecipient's expense, any such infringement action brought against City.

b. Should any intellectual property license by the Subrecipient to City under this Agreement become the subject of an intellectual property infringement claim, Subrecipient will exercise its authority reasonably and in good faith to preserve City's right to use the licensed intellectual property in accordance with this Agreement at no expense to City. City shall have the right to monitor and appear through its own counsel (at Subrecipient's expense) in any such claim or action. In the defense or settlement of the claim, Subrecipient may obtain the right for City to continue using the license intellectual property or replace or modify the licensed intellectual property so that the replaced or modified intellectual property becomes non-infringing provided that such replacement or modification is functionally equivalent to the original licensed intellectual property. If such remedies are not reasonably available, City may be entitled to a refund of all monies paid under this Agreement, without restriction or limitation or any other rights and remedies available at law or in equity.

c. Subrecipient agrees that damages alone would be inadequate to compensate City for breach of any term of these intellectual property provisions of this Section by Subrecipient. Subrecipient acknowledges City would suffer irreparable harm in the event of such breach and agrees City shall be entitled to obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or imitation of any other rights and remedies available at law or in equity.

8.9 Survival

The provisions set forth herein shall survive any termination or expiration of this Agreement or any project schedule

S9 SUBCONTRACTING/ASSIGNMENT

9.1 Subrecipient's duties under this Agreement shall not be delegated by Subrecipient nor shall any of the work or services to be performed hereunder be subcontracted out to third parties without the prior, written consent of the City. Third-party subcontractors identified in this Agreement shall be deemed to have been approved by City. Subrecipient shall perform oversight of such third-party subcontractors to ensure compliance with WIOA regulations, including requirements related to confidentiality, records retention, allowable costs, and other requirements applicable to this program.

S10 COMPLAINTS/GRIEVANCES

Subrecipient shall follow the City's policies and procedures for resolving any complaints and/or grievances arising in connection with an alleged violation of the grant, or other Agreements.

S11 PUBLIC ACCESS TO RECORDS

As a condition of receiving WIOA (Workforce Innovation and Opportunity Act) funds, the independent auditor or monitor of the City, the State of California Employment Development Department auditors, investigators, and monitors, and the Department of Labor, Comptroller General of the United States or their duly authorized representatives shall at all times during the Agreement term and for a period of three years thereafter have the right of access to any books, documents, papers, financial statements and records (including computer records) of the Subrecipient which are directly pertinent to charges under this Agreement to assure compliance with the terms of the Agreement and the WIOA statutes, regulations, and directives, and to make excerpts, transcripts, and photocopies. This right also includes timely and reasonable access to Subrecipient's personnel with knowledge of the records and financial statements for the purpose of interviews and discussions related to documents and services provided under this Agreement.

S12 INSURANCE AND BONDS

Subrecipient shall procure and maintain insurance for the duration of the contract 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 Subrecipient, its agents, representatives, or employees.

12.1 Minimum Scope and Limits of Insurance

Subrecipient shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage and \$2,000,000 aggregate. ISO Occurrence Form CG 0001 is required.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 is required.
3. Workers' Compensation Statutory Limits and Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

12.2 Deductibles and Self-Insured Retentions

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

12.3 Other Insurance Provisions

The general liability and automobile insurance policies shall contain, or be endorsed to contain, the following provisions:

1. The City of Sunnyvale, its officials, employees, agents and volunteers are to be covered as additional insureds with respects to liability arising out of activities performed by or on behalf of the Subrecipient; products and completed operations of the Subrecipient; premises owned, occupied or used by the Subrecipient; or automobiles owned, leased, hired or borrowed by the Subrecipient. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sunnyvale, its officers, employees, agents or volunteers.
2. For any claims related to this project, the Subrecipient'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 Subrecipient's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not effect coverage provided to the City of Sunnyvale, its officers, officials, employees, agents or volunteers.
4. The Subrecipient'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. 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.

12.4 Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City of Sunnyvale.

12.5 Verification of Coverage

Subrecipient 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 prior to commencement of work.

The City will accept evidence of self-insurance from the Subrecipient that meets the above requirements.

12.6 Fidelity Bonds

If cash advances are part of the contract, a fidelity bond is required in an amount of \$100,000 or the highest estimated monthly expenditure, whichever is lower, covering any

and all of City's officers and employees involved in the performance of the contract.

S13 FISCAL AND RECORDKEEPING RESPONSIBILITIES

- 13.1 Subrecipient shall comply with OMB CFR Chapter II, Part 200, et al., *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards: Final Rule* and the Department of Labor's (DOL) exceptions at 2 CFR Chapter II, Part 2900 et al. and as hereafter amended relating to the utilization of funds, the operation of programs, and maintenance of records, books, accounts, and other documents under the Act.
- 13.2 Subrecipient shall maintain adequate administrative and accounting controls, personnel standards, evaluation procedures and other policies to promote the safe and effective use of funds provided by this Agreement.
- 13.3 Subrecipient shall submit reports of fiscal data in accordance with City's policies and procedures. For cost reimbursement Agreements, fiscal accounts shall be maintained in a manner sufficient to permit preparation of expense reports on an accrual basis as required by City and DOL. Such financial information reported must be taken directly or linked by worksheet to books of original entry and traceable to source documents. Subrecipient shall maintain a cost allocation plan for distribution of shared costs. Fiscal records must provide a clear audit trail.
- 13.4 Subrecipient shall separately account for WIOA funds on deposit. All funding under this agreement will be made by check or wire transfer for deposit in Subrecipient's bank account.
- 13.5 Under this Agreement Subrecipient shall use funds allocated exclusively for costs related to employment and training services as defined in Exhibit A, Program Design and Standards.
- 13.6 Subrecipient shall not be allowed to recover costs incurred before and after the effective dates of this Agreement.
- 13.7 All records pertaining to this Agreement shall be retained for five (5) years from the date of City's final expenditure report except when audit has not been completed or audit findings have not been resolved. In such cases, the pertinent records must be maintained until audit is completed and audit findings resolved. Records for nonexpendable property acquired with federal funds shall be retained for three (3) years after its final disposition.
- 13.8 For any Agreement in which unexpended funds resulting from cash advances remain upon completion or termination of this Agreement, Subrecipient shall return such funds to the City within sixty (60) days of the termination of Agreement.
- 13.9 Subrecipient shall account for any income received deemed as Program Income and utilize said income in accordance with that same section. For public or private non-profit agencies, this shall include any revenues in excess of costs. These funds may be retained

by the Subrecipient to underwrite additional training or training related services pursuant to the Agreement and/or grant which generated them as approved by City; or the funds shall be returned to City. Fiscal records must provide a clear audit trail for expenditures incurred and costs relative to additional training or services to be provided by appropriate cost category.

S14 **PROPERTY MANAGEMENT**

14.1 The Subrecipient must obtain City's approval prior to charging this Agreement for any portion of the cost of the following:

- The purchase of property with a per-unit single cost totaling \$5,000 or more.
- The purchase, rent, licensing, maintenance fee, or subscription of information-technology applications/software/services with a per-unit single or cumulative cost totaling \$5,000 or more within a twelve-month period.

The Subrecipient shall consult with the City prior to disposing of equipment purchased with WIOA funds.

14.2 The Subrecipient shall allow the City to make on-site verification that authorized non-expendable property has been purchased and is being used for the purposes of this Agreement. Subrecipient must maintain accurate inventory records of all equipment purchased with federal funds.

14.3 Subrecipient shall maintain an audit trail showing the acquisition and disposition of all non-expendable property. Such records shall be retained for a period of three (3) years after the final disposition of the property.

14.4 Funds provided under the Agreement shall not be used for the purchase of real property or options to purchase.

S15 **RIGHT TO REALLOCATE FUNDS**

15.1 City will monitor Subrecipient's expenditures monthly under this Agreement and may reallocate funds in the event Subrecipient is not making adequate progress toward budget goals, per Exhibit D of this Agreement.

15.2 City will provide Subrecipient with no less than ten (10) days written notification of its intent to reallocate funds. Subrecipient shall have opportunity to respond and offer any views and recommendations within the ten (10) day notification period. City is not bound to accept Subrecipient's views and/or recommendations with respect to the intended reallocation.

S16 **REPORTS**

16.1 Subrecipient shall prepare and submit all required documents and reports as specified by the City. In addition, special reports necessary for program operation and evaluation may be required.

- 16.2 Subrecipient shall submit a monthly performance report, within 10 days of the end of a month, to City. This report shall reflect current performance to plan information, note any areas of concern or problems, and include any other information as appropriate to the performance of the services under this Agreement.

S17 TERMINATION OF AGREEMENT

This Agreement may be terminated in whole or in part under the following circumstances:

17.1 Termination for Convenience

In the event that either the Subrecipient or the City determines that continuation of this Contract would not be in its best interests, this Agreement may be terminated in whole or in part by either party. Termination shall be effected by delivery to the Subrecipient or City of a Notice of Termination. Such notice shall be delivered a minimum of 30 days prior to the effective date of termination, which shall be specified in the notice. Subrecipient shall be compensated pursuant to the terms of this Agreement for all funds earned up to the point of termination.

17.2 Termination for Cause

City may terminate this Agreement when it has determined that Subrecipient has failed to provide any of the services specified or to comply with any of the provisions contained in this Agreement. City will notify the Subrecipient of such unsatisfactory performance in writing. Subrecipient will have ten (10) days to correct the deficiencies or the Agreement terminates. In the event of such termination, City shall be liable for payment only for such services as were satisfactorily rendered prior to the effective date of the termination.

17.3 Insufficient Funding

Under conditions of reduced funding, the City reserves the right to immediately terminate this Agreement.

S18 SUSPENSION OF FUNDS

City may suspend payments to Subrecipient under the following circumstances:

- 18.1 Failure to comply in any respect with either the terms and/or conditions of this Agreement.
- 18.2 Submittal by Subrecipient of reports which are incorrect or incomplete in any substantial and material respect.
- 18.3 Failure of Subrecipient to accept any additional conditions that may be required by law, by executive order, by regulation, or by other policy announced by DOL or the State at any time.

S19 WITHHOLDING OF PAYMENTS/REIMBURSEMENTS

Notwithstanding any other provision of this Agreement, City may elect not to make a particular payment under this Agreement if:

- 19.1 Subrecipient, with or without knowledge, shall have made any misrepresentation of a substantial and material nature with respect to any information furnished to City;
- 19.2 There is pending litigation with respect to the performance by Subrecipient of any of its duties or obligations hereunder which may jeopardize or adversely affect carrying out the project, including any court action or proceeding involving the Federal Bankruptcy Act or assignment for benefit of creditors;
- 19.3 Subrecipient is in default under any provision of this Agreement.

S20 DISPUTES

- 20.1 The Subrecipient agrees to use best efforts to resolve disputes arising from this Agreement by administrative processes and negotiations in lieu of litigation. Subrecipient agrees to continue performance unless impasse declared.
- 20.2 Any dispute concerning a question of fact or the resolution of costs arising under this Agreement which is not settled by informal means shall be decided by the City's Program Manager. A written decision will be mailed or otherwise furnished to the Subrecipient, in accordance with City's procedures.
- 20.3 Subrecipient shall have access to the City's Grievance Procedures for the resolution of any complaints or issues not resolved informally.

S21 DISALLOWED COSTS

Except to the extent that the City determines it will assume liability, Subrecipient will be liable for and will repay to City, or deduct from a future Request for Payment, any amounts expended under this Agreement found not to be in accordance with WIOA including, but not limited to, disallowed costs. Such repayment will be from funds (non-federal) other than those received under WIOA. Any such sum shall be deemed delinquent which remains unpaid thirty (30) days following written demand by City for payment.

S22 PAYMENT TO SUBCONTRACTOR

City will pay Subrecipient for the performance of its services and duties as specified in the Agreement. Payment shall be for allowable costs actually incurred by Subrecipient pursuant to the Agreement during its period of performance.

S23 PROGRAM AGENT POLICIES AND PROCEDURES

- 23.1 Subrecipient shall comply with City's policies and procedures, and any directive or other bulletin issued which clarify or modify City policies and procedures.
- 23.2 If the Subrecipient conducts eligibility determination, Subrecipient shall assure that only eligible participants are enrolled in the program funded under this Agreement. Failure of this condition shall entitle City to recovery of disallowed costs incurred by any ineligible participant.

S24 COORDINATION WITH PROGRAMS UNDER TITLE IV OF THE HIGHER EDUCATION ACT

- 24.1 Education Assistance Programs shall include, but not be limited to, Federal and State Programs such as Pell Grant, Supplemental Educational Opportunity Grant, Work Study program, the Perkins loan, the Family Education Loan, Direct Loan Demonstration, Cal Grant C and Board of Governors Grant.
- 24.2 If the Subrecipient is a recipient of Title IV funding, then the Subrecipient shall institute the following procedures: Subrecipient shall report all financial assistance applications, including but not limited to those for Pell grants, and resultant funds received which cover all or part of the tuition and fees, books and supplies, or trainee support costs relative to all participants enrolled under this Agreement, especially under Title IV of the Higher Education Act. The specific usage of any financial assistance funds must be documented in the participant's training plan and shall be incorporated into this Agreement as appropriate. Any financial assistance funds received by Subrecipient on behalf of participants under this Agreement for the specific purposes of tuition, fees, books, and/or supplies shall be immediately reported to City. If payment for such expenses has already been made by City to Subrecipient, Subrecipient shall reimburse City at the address provided in Section 21, Notices, for the amount of any financial assistance received for the above specific purposes. Participants shall not be required to apply for or access student loans or incur personal debt as a condition of participation.
- 24.3 Subrecipient shall identify all Title IV monies made available to the participant, and inform the City of the amount and disposition of HEA Title IV awards and other types of financial aid given to each participant.
- 24.4 If Pell Grants are utilized, the proper mix of Workforce Innovation and Opportunity Act funds and Pell resources shall be documented.
- 24.5 Subrecipient shall demonstrate its capacity for monitoring and providing necessary reports relative to this section as part of the normal monitoring conducted by the City.

S25 AUDIT REQUIREMENTS

- 25.1 Non-Federal subrecipients that expend \$750,000 or more in a year in Federal awards shall have a single audit conducted in accordance with 2 CFR Part 200.514, except when they

elect to have a program-specific audit. When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's laws, regulations, or grant Agreements do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with 200.507. Subrecipient shall submit a copy of its audit report to the City within 30 days of receipt of the audit report or within nine months of the end of the audit period, whichever is earlier. If this Agreement is for goods or services provided as a contractor, Subrecipient is not subject to these audit requirements.

S26 RECEIPT OF ADDITIONAL FUNDS

Subrecipient shall report any additional or unexpected funds received in conjunction with the services provided under the terms of this Agreement to the City upon receipt of such funds or notification of award of such funds.

S27 ATTORNEY'S FEES AND COSTS

If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover all legal costs and reasonable attorney's fees incurred in bringing such as action, whether such action is resolved by adjudication, arbitration or settlement.

S28 INCIDENT REPORTING

Subrecipient shall be alert for instances of fraud, abuse, and other criminal activity relative to WIOA-funded activities and services. Any such instances detected shall immediately be reported to City's Manager of Job Seeker Services, or in her absence, City's Manager of Business Operations.

S29 SALARY AND BONUS LIMITATIONS

In compliance with Public Law 109-234, none of the funds appropriated in Public Law 109-149 or prior Acts under the heading "Employment and Training" that are available for expenditure on or after June 15, 2006 shall be used by a recipient or subrecipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II (note: \$183,300 as of 1/15), except as provided for under section 101 of Public Law 109-149. This limitation shall not apply to contractors providing goods and services as defined in *Uniform Guidance* 2 CFR Part 200 and Part 2900. The incurrence of costs and receiving reimbursement for these costs under this award certifies that your organization has read the above special condition and is in compliance.

ASSURANCES AND CERTIFICATIONS

1. The Subrecipient assures and certifies that it will in performing its responsibilities as a subrecipient under this Agreement hereby fully comply with the provisions of:

- **The Workforce Innovation and Opportunity Act of 2014 (WIOA);**
- The Office of Management and Budget (OMB) *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards: Final Rule*, at 2 Code of Federal Regulations (CFR) Chapter II, Part 200, et al; and the Department of Labor's (DOL) exceptions at 2 CFR Chapter II, Part 2900 et al; and
- All regulations, legislation, directives, policies, procedures and amendments issued pursuant hereto.

Other Requirements:

- All State legislation and regulations to the extent permitted by federal law and all policies, directives, and/or procedures which implement the WIOA.
- The provisions of Public Law 107-288, Jobs for Veterans Act, as the law applies to DOL job training programs.

2. **NONDISCRIMINATION**

Subrecipient assures and certifies it will comply with the nondiscrimination and equal opportunity provisions of the following laws:

- Section 188 of the Workforce Innovation and Opportunity Act of 2014 (WIOA), which states that no individual in the United States may, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in any WIOA Title I—financially assisted program or activity, be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any WIOA Title I—funded program or activity.
- Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, and national origin.
- Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities.
- The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and
- Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.
- Subrecipient shall also comply with *Uniform Guidance* 2 CFR Part 200 and Part 2900 and all other regulations implementing the laws listed above.

Subrecipient agrees to comply with the Americans with Disabilities Act (ADA) of 1990, as well as all applicable regulations and guidelines issued pursuant to ADA (42 USC 12101 et seq).

Subrecipient shall include the nondiscrimination and compliance provisions of this section in all subcontracts to perform work under this Agreement.

3. CONFIDENTIALITY

The City, State of California, and Subrecipient will exchange various kinds of information pursuant to this Agreement. That information will include data, applications, program files, and databases. These data and information are confidential when they define an individual or an employing unit. Confidential information requires special precautions to protect it from unauthorized use, access, disclosure, modification, and destruction. The sources of information may include, but are not limited to, the Employment Development Department, the California Department of Social Services, the California Department of Education, the California Department of Corrections and Rehabilitation, the County Welfare Department(s), the County IV-D Directors Office of Child Support, the Office of the District Attorney, the California Department of Mental Health, the California Office of Community Colleges, and the Department of Alcohol and Drug Programs.

City and Subrecipient agree that:

- a. Each party shall keep all information that is exchanged between them in the strictest confidence and make such information available to their own employees only on a "need-to-know" basis.
- b. Each party shall provide security sufficient to ensure protection of confidential information from improper use and disclosures, including sufficient administrative, physical, and technical safeguards to protect this information from reasonable unanticipated threats to the security or confidentiality of the information.
- c. The Subrecipient agrees that information obtained under this Agreement will not be reproduced, published, sold or released in original or in any other form for any purpose other than those specifically identified in this Agreement.
 - 1) Aggregate Summaries: All reports and/or publications developed by the Subrecipient based on data obtained under this Agreement shall contain confidential data in aggregated or statistical summary form only. "Aggregated" refers to a data output that does not allow identification of an individual or employer unit.
 - 2) Publication: Prior to publication, Subrecipient shall carefully analyze aggregated data outputs to ensure the identity of individuals and/or employer units cannot be inferred pursuant to Unemployment Insurance Code Section 1094(c). Personal identifiers must be removed. Geographic identifiers should be specified only in large areas and as needed, and variable should be recorded in order to protect confidentiality.
 - 3) Minimum Data Cell Size: The minimum data cell size or derivation thereof shall be three participants for any data table released to outside parties or to the public.
- d. Each party agrees that no disaggregate data, identifying individuals or employers, shall be released to outside parties or the public.

- e. The Subrecipient shall notify City's designated data security representative (see below) by telephone of any actual or attempted information security incidents within 24 hours of initial detection. Information security incidents include but are not limited to any event (intentional or unintentional) that causes the loss, damage, or destruction, or unauthorized access, use, modification, or disclosure of information assets. Subrecipient shall cooperate with City in any investigation of security incidents. The system or device affected by an incident and containing confidential data obtained in the administration of this program shall be immediately removed from operation upon confidential data exposure or a known security breach. It shall remain removed from operation until correction and mitigation measures are applied. If Subrecipient learns of a breach in the security of the system which contains confidential data obtained under this Agreement, then Subrecipient must provide notification to individuals pursuant to Civil Code Section 1798.82.
- f. The Subrecipient shall provide for the management and control of physical access to information assets (including personal computer systems, computer terminals, mobile computing devices, and various electronic storage media) used in performance of this Agreement. This shall include but is not limited to security measures to physically protect data, systems, and workstations from unauthorized access and malicious activity; the prevention, detection, and suppression of files; and the prevention, detection, and minimization of water damage.
- g. At no time will confidential data obtained pursuant to this agreement be placed on a mobile computing device, or on any form of removable electronic storage media of any kind unless the data are fully encrypted.
- h. Each party shall provide its employees with access to confidential information with written instructions fully disclosing and explaining the penalties for unauthorized use or disclosure found in section 1798.55 of the Civil Code, section 502 of the Penal Code, section 2111 of the Unemployment Insurance Code, section 10850 of the Welfare and Institutions Code and other applicable local, state and federal laws.
- i. Each party shall (where appropriate) store and process information in electronic format in such a way that unauthorized persons cannot reasonably retrieve the information by means of a computer.
- j. Each party shall promptly return to the other party confidential information when its use ends or destroy the confidential information utilizing an approved method of destroying confidential information by shredding, burning, or certified or witnessed destruction. Magnetic media are to be degaussed or returned to the other party.
- k. If the Subrecipient enters into an Agreement with a third party to provide services, Subrecipient agrees to include these data and security and confidentiality requirements in the Agreement with the third party. In no event shall said information be disclosed to any individual outside of that third party's authorized staff, subcontractor(s), service providers, or employees.
- l. Each party shall designate an employee who shall be responsible for overall security and confidentiality of its data and information systems and each party shall notify the other of any changes in that designation. As of this date, the following are those individuals:

For the City:

Cindy Stahl, Manager of Job Seeker Services, (408) 730-7236

For the Subrecipient:

Steven Schmidbaurer, Interim Executive Director, (650) 330-6499

4. Subrecipient makes the following further assurances and certifications:
- a. Subrecipient certifies, by executing this Agreement, that neither it nor its principals are listed on the government-wide Excluded Parties List System in the System for Award Management (SAM). The list in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority.
 - b. Subrecipient, by signing this Agreement, does swear under penalty of perjury that it has not failed to satisfy any major condition in a current or previous agreement with the Department of Labor, State of California, or City and has not failed to satisfy conditions relating to the resolution of a final finding and determination, including repayment of debts.
 - c. Subrecipient certifies, by executing this Agreement, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8355) and will provide a drug-free workplace by taking the following actions:
 - 1) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
 - 2) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b), to inform employees about all of the following:
 - (a) the dangers of drug abuse in the workplace;
 - (b) the person's or organization's policy of maintaining a drug-free workplace;
 - (c) any available counseling, rehabilitation, and employee assistance programs;
 - and
 - (d) penalties that may be imposed upon employees for drug abuse violations.
 - 3) Provide as required by Government Code Section 8355(c) that every employee who works on the proposed Agreement:
 - (a) will receive a copy of the Subrecipient's drug-free statement; and
 - (b) will agree to abide by the terms of the Subrecipient's statement as a condition of employment on the Agreement.
 - d. It will comply with the requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (P.L. 91-646), which provides

for fair and equitable treatment of persons displaced as a result of Federal and Federally assisted programs.

- e. It will comply with the provisions of the Hatch Act, which limits the political activity of certain State and local government employees as appropriate.
- f. It will comply with the requirements that no program under the Act involve political activities.
- g. It will establish safeguards to prohibit employees from using their positions for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
- h. Subrecipient certifies that this agreement does not provide for the advancement or aid to any religious sect, church or creed, or sectarian purpose nor to any institution controlled by same. Participants in the program will not be employed on the construction, operation, or maintenance of that part of any facility which is used for religious instruction or worship. In addition, the employment or training of participants in sectarian activities is prohibited.
- i. Funds provided through this Agreement shall only be used for activities that are in addition to those which would otherwise be available in the area in the absence of such funds.
- j. If the amount of the Agreement exceeds \$100,000, the Subrecipient hereby assures and certifies to the lobbying restrictions at *Uniform Guidance* 2 CFR Part 200 and 2 CFR Part 2900:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the Subrecipient, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative Agreement over \$100,000.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, the Subrecipient will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

This certification is a material representation of fact upon which reliance is placed when entering into this Agreement and is a prerequisite for entering into this Agreement imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file

- the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- k. Subrecipient shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201).
 - l. If the amount of the Agreement exceeds \$150,000, the Subrecipient agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 USC 7401-7471q), and the Federal Water Pollution Control Act as amended (33 USC 1251-1387).
 - m. If Subrecipient is a corporation, certifies it is registered with the Secretary of State of the State of California.
 - n. It shall take appropriate steps to provide for increased participation of qualified special disabled and Vietnam-era veterans with special emphasis on qualified veterans who served in the Indo-China theatre on or after August 5, 1964, and on or before May 7, 1975, assuring adequate training and employment opportunities for such veterans in its programs.
 - o. It shall to the maximum extent feasible coordinate services with the appropriate Veterans Administration Facilities in utilizing the apprenticeship and other on-the-job training activities available under Section 1787 of Title 38 U.S. Code, and it shall consult with the appropriate apprenticeship agency concerning any training activities in apprenticeship occupations.
 - p. It possesses legal authority to apply for the subaward; that a resolution, motion, or similar action has been duly adopted or passed as an official act of the Subrecipient's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required. Documentary proof of the action authorizing the Subrecipient to apply for the subaward shall be provided to the City upon demand.
 - q. Appropriate standards for health and safety in work and training situations will be maintained.
 - r. It will provide workers' compensation protection to participants in on-the-job training or work experience, including medical, accident and income maintenance insurance, at the same level and to the same extent as others similarly employed who are covered by a workers' compensation statute or system. Where coverage of similarly employed, employees is provided through a self-insurance system, coverage of any participants shall also be provided through that system. Where participants are employed or engaged in any program where others are similarly employed and not covered by an applicable workers' compensation statute, participants shall be provided with medical

and accident insurance coverage provided under the applicable State workers' compensation statute.

- s. Institutional skill training and training on-the-job shall only be for occupations in which the City has determined there is reasonable expectation for employment.
- t. Standards and procedures with respect to the awarding of academic credit and certifying educational attainment in programs conducted under said title shall be consistent with the requirements of applicable State and local law and regulation.
- u. No program shall impair existing contracts for services or collective bargaining Agreements, unless the employer and the labor organization concur in writing with respect to any elements of the proposed activities which affect such Agreement, or either such party fails to respond to written notification requesting its concurrence within 30 days of receipt of notification. In addition, no funds awarded under this Agreement shall be used to assist, promote, or deter union organizing.
- v. No participant shall be employed or job opening filled (A) when any other individual is on layoff from the same or any substantially equivalent job, or (B) when the employer has terminated the employment of any regular employee or otherwise reduced its work force with the intention of filling the vacancy so created by hiring a participant whose wages are subsidized under this grant.
- w. No jobs shall be created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed individuals.
- x. No participant who is engaged in this program may be charged a fee for placement or referral services.
- y. No funds awarded under this Agreement shall be used to encourage or induce the relocation of an establishment or part thereof, which results in a loss of employment for any employee at the original location.
- z. Subrecipient shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

BUDGET

The Subrecipient will be reimbursed for youth services program costs and activities conducted within the scope of this Agreement. The budget under this Agreement shall not exceed a total of \$525,000 as detailed in Attachment 1.

Any changes requested for the budget shall be submitted by written request to the City and are subject to City's written approval.

Out-of-School Youth Expenditure Requirement

It is required that a minimum of 97 percent of contract expenditures be for costs related to serving out-of-school youth.

Work Experience Expenditure Requirement

It is required that a minimum of 25 percent of contract expenditures be for costs related to work experience.

Accrued expenditures (incurred but not yet paid) must be reported monthly on the Request for Payment.

Matching funds¹ are not required for this Agreement but are encouraged in order to leverage grant funds. They may be reported on the Request for Payment. Documentation must be maintained for matching fund expenditures reported.

METHOD OF PAYMENT

This Agreement is a cost reimbursement Agreement. Reimbursement for 100% of program costs and activities can be invoiced as completed on a monthly basis using the Request for Payment form enclosed with this Agreement. Requests shall be submitted by the 10th of the month following the month for which reimbursement is being requested.

Expenditures for in-school and out-of-school youth must be tracked and reported separately.

Documentation of all expenditures consisting of general ledger printouts and supporting documentation of cost allocation must be submitted with each payment request. Failure to submit required documentation and forms may cause a delay in payment.

¹ The definition of cash match is a contribution of funds made available to the contractor, to be used specifically for these project activities and consistent with the allowable activities of the fund source. The contractor has control over and disburses these funds. Examples include: money received from employers, foundation, private entities, or local governments. The definition of in-kind match is a contribution of non-cash resources used specifically for project activities. Examples include donated personnel, services, or use of equipment or space.

BUDGET SUMMARY PLAN			
Organization Name: JobTrain			
Project Title: WIOA Youth Program			
Term: 7/1/2017 - 6/30/2018	In School Youth (ISY)	Out of School Youth (OSY)	Total
I. Expenditures:			
A. Staff Salaries	11,550	164,180	175,730
B. Staff Benefits	3,350	47,612	50,962
Staff Benefit Rate (29%)			
C. Staff Travel	0	2,600	2,600
D. Operating Expenses	0	42,000	42,000
E. Work Experience			
1. Staff Salaries	0	48,000	48,000
2. Staff Benefits	0	13,920	13,920
3. Youth Salaries	0	73,002	73,002
F. Occupational Training	0	100,000	
G. Supportive Services	100	12,686	12,786
H. Other (attach detailed description)	0	6,000	6,000
Total	15,000	510,000	525,000

CITY OF SUNNYVALE – NOVA WORKFORCE SERVICES DEPARTMENT
REQUEST FOR PAYMENT

1. Subrecipient Name: **JobTrain**
2. Mailing Address: **1200 O'Brien Drive**
Menlo Park, CA 94025
3. Request Period: From _____ to _____
4. Payment is requested for the following budget items (attach backup documentation):

Description	In-School	Out-of-School	Total
a. Staff Salaries	\$ _____	\$ _____	\$ _____
b. Staff Benefits	_____	_____	_____
c. Staff Travel	_____	_____	_____
d. Operating Expenses	_____	_____	_____
e. Work Experience	_____	_____	_____
f. Occupational Training	_____	_____	_____
g. Supportive Services	_____	_____	_____
h. Other	_____	_____	_____
i. Total	_____	_____	_____

5. Current Request \$ _____
6. Cumulative Requests \$ _____ (NOVA to calculate)
7. Matching Expenditures \$ _____ (attach documentation)
8. Accrued Expenditures (not yet paid): In-School \$ _____ Out-of-School \$ _____

CERTIFICATION:

I CERTIFY that to the best of my knowledge and belief this report is true in all aspects and that all disbursements have been made for the purpose and conditions of this grant.

Authorized Signature Title Date

SEND TO:

NOVA Workforce Board, Attn: Fiscal, 505 W. Olive Ave., Suite 550, Sunnyvale, CA 94086
Or email pdf to: **dgamble@novaworks.org**

NOVA WORKFORCE SERVICES USE ONLY

Cash reimbursement for the period _____ is recommended in the amount of \$ _____.

By: _____ Date: _____

Approved By: _____ Date: _____

Budget Reference No.: **510071-5242 (in-school)** \$ _____
510072-5242 (out-of-school) \$ _____
510074-5242 (YWE: in-school) \$ _____
510075-5242 (YWE: out-of-school) \$ _____