

Original to:

____ City Clerk
____ NOVA
____ County of San Mateo

AGREEMENT BETWEEN
CITY OF SUNNYVALE AND COUNTY OF SAN MATEO
FOR DISASTER-RELATED EMPLOYMENT SERVICES

This Agreement is made on the ____ day of September, 2017 between the City of Sunnyvale, a California municipal corporation (hereinafter referred to as "City"), on behalf of the NOVA Workforce Board, and the County of San Mateo (hereinafter referred to as "Contractor").

Whereas, City has applied for and been granted funds from the State of California to provide disaster-relief employment to dislocated workers eligible under the Workforce Innovation and Opportunity Act Title I; and

Whereas, under this Agreement, Contractor is participating in the operation of such dislocated worker services as a contractor of funds; and

Whereas, City and Contractor 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**: Contractor agrees to provide disaster-related employment 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: September 1, 2017 through September 30, 2018
- 3. Funding Limit: \$284,000
- 4. Agreement Number: 001-1093-18
- 5. State of California Subgrant No.: K7102049

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

COUNTY OF SAN MATEO

BY: _____

BY: _____

NAME: **Deanna J. Santana** _____

NAME: **[typed name]** _____

TITLE: **City Manager** _____

TITLE: **[title]** _____

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 City of Sunnyvale's NOVA Workforce Services Department (hereinafter "NOVA") has been awarded funding from the State of California Employment Development Department to provide disaster-related employment services for eligible individuals to assist with clean-up and recovery efforts in San Mateo County resulting from the severe winter storms in January 2017. NOVA and Contractor will work together to recruit and place individuals in temporary work assignments in departments within the County of San Mateo. It is understood by all parties that the worker shall be independently contracted through NOVA and shall not be an employee of Contractor. Contractor will not provide fringe benefits, including health insurance benefits, paid vacation, or any other employee benefit, for the benefit of the workers in this project.

B. SCOPE OF SERVICES

Under the direction of NOVA, Contractor is responsible for providing supervision of the workers referred to Contractor and which Contractor agrees to place into temporary jobs.

Contractor agrees to:

- a. Provide supervision of workers referred by NOVA in accordance with job descriptions provided by Contractor.
- b. Ensure that the Contractor staff member who supervises worker understands their responsibilities under this project.
- c. Inform worker of all work-related responsibilities, and provide sufficient training to assure that worker can adequately perform work responsibilities.
- d. Provides the worker with safety instructions and equipment necessary for reasonable protection against injury and damage. If Contractor provides special clothing or equipment to regular employees, Contractor shall provide the same type of clothing or equipment to the worker performing similar work.
- e. Insure access by NOVA staff to worker during scheduled hours of work activity for purposes of worker evaluation and consultation with work experience site supervision.
- f. Comply with program requirements including documentation of worker hours, informing NOVA of any supervisory changes, and notifying NOVA of any injuries incurred by worker.

- g. Insure timely communications with NOVA relative to worker's negative performance or major problems, or the need for dismissal/transfer from a specific work site.
- h. Adhere to all applicable State labor code provisions and Federal labor laws, including applicable provisions of the Fair Labor Standards Act.
- i. Assure that no worker will displace regular employee(s) at the work site.
- j. Assure that no worker shall be engaged in sectarian, political, or union activities.
- k. Assure that worker will be treated without regard to race, color, national origin, disability, sex, political affiliation, belief, or citizenship, and maintain an environment which prohibits sexual harassment of employees or retaliation toward employees.
- l. Assure that the work site and working conditions are in compliance with the requirements of the Americans with Disabilities Act.

NOVA agrees to:

- a. Pay the wages of the worker for the work experience at a rate mutually agreed upon by the parties to this Agreement, but no less than the minimum wage rate according to the Fair Labor Standards Act of 1983, as amended, or the State or local minimum wage, whichever is higher. Payment will be facilitated by the California Community College Foundation, which serves as employer of record for this work experience.
- b. Through the California Community College Foundation, provide workers' compensation insurance coverage for Trainee.
- c. Provide an orientation to Contractor covering work experience expectations and requirements and maintain contact with Contractor to ensure a successful work experience.

C. PROJECT RESULTS:

The project goal is for 55 workers to be placed in temporary jobs and gain work experience by performing disaster-recovery work in the County of San Mateo.

II. REPORTING AND DATA COLLECTION REQUIREMENTS

A. Contractor Responsibilities

- a. Contractor shall maintain and submit documentation of worker work hours on a bi-weekly basis. Documentation shall be submitted to the individual designated by NOVA by Thursday of non-pay weeks.

- b. Contractor understands that workers will be paid bi-weekly every other Friday based on the mutually agreed-upon pay rate. Payment will be made through the California Community College Foundation.

III. PROGRAM COORDINATION

1. NOVA's Business Services Manager shall be the Program Manager for NOVA and shall render overall supervision of the progress and performance of this Agreement by NOVA. All services agreed to be performed by NOVA shall be under the overall direction of the Program Manager.
2. Contractor 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, Contractor shall notify NOVA immediately of such occurrence. Contractor Coordinator and staff will fully cooperate with NOVA 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/NOVA: Jeanette Langdell, Employment Training Manager
NOVA
505 West Olive Ave., Suite 550
Sunnyvale, CA 94086
Telephone: (408) 730-7241
Email: jlangdell@novaworks.org

Contractor: [name, title, address, phone, email]

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.

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. City shall endeavor to provide a minimum of thirty (30) days notice in the event of reduced funding.

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

Contractor 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

Contractor 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 Contractor, or its officers, employees, agents or representatives. Contractor 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 Contractor to be performed under this Agreement or arising from any negligence or willful misconduct of Contractor, 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 Contractor and City for third-party claims in accordance with applicable provisions of California law. City shall notify Contractor 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 Contractor's obligations under this Section.

S5 LEGAL RELATIONSHIP

- 5.1 It is understood and agreed that Contractor is an independent contractor and that no relationship of employer-employee exists between the parties hereto; that Contractor 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 Contractor under the provisions of this Agreement; that as an independent contractor, Contractor 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 Contractor has no authority to act for or on behalf of City other than acting as Contractor 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 Contractor.
- 5.3 All powers not explicitly vested in the Contractor by this Agreement remain with City.
- 5.4 Contractor, 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. Contractor shall be similarly responsible for all damages to persons or property that occur as a result of Contractor fault or negligence. Contractor shall take adequate precautions to protect the work, the workers, the public, and the property of others. Failure to do so shall place Contractor 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 Contractor. 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

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

S7 PERSONNEL

- 7.1 Contractor 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 Contractor 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 SUBCONTRACTING/ASSIGNMENT

- 8.1 Contractor's duties under this Agreement shall not be delegated by Contractor 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. Contractor 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.

S9 COMPLAINTS/GRIEVANCES

Contractor 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.

S10 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 Contractor 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 Contractor'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.

S11 INSURANCE AND BONDS

Contractor 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 Contractor, its agents, representatives, or employees.

11.1 Minimum Scope and Limits of Insurance

Contractor 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.

11.2 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.

11.3 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 Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. 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 Contractor's insurance shall be primary. Any insurance or self-insurance maintained by the City of Sunnyvale, its officers, officials, employees, agents and volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
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 Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

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.

11.4 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.

11.5 Verification of Coverage

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

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

11.6 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.

S12 FISCAL AND RECORDKEEPING RESPONSIBILITIES

- 12.1 Contractor 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.
- 12.2 Contractor 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.
- 12.3 Contractor 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. Contractor shall maintain a cost allocation plan for distribution of shared costs. Fiscal records must provide a clear audit trail.

- 12.4 Contractor shall separately account for WIOA funds on deposit. All funding under this agreement will be made by check or wire transfer for deposit in Contractor's bank account.
- 12.5 Under this Agreement Contractor shall use funds allocated exclusively for costs related to employment and training services as defined in Exhibit A, Program Design and Standards.
- 12.6 Contractor shall not be allowed to recover costs incurred before and after the term of this Agreement.
- 12.7 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.
- 12.8 For any Agreement in which unexpended funds resulting from cash advances remain upon completion or termination of this Agreement, Contractor shall return such funds to the City within sixty (60) days of the termination of Agreement.
- 12.9 Contractor 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 Contractor 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.

S13 PROPERTY MANAGEMENT

- 13.1 The Contractor 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 Contractor shall consult with the City prior to disposing of equipment purchased with WIOA funds.
- 13.2 The Contractor 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. Contractor must maintain accurate inventory records of all equipment purchased with federal funds.
- 13.3 Contractor 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.

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

S14 RIGHT TO REALLOCATE FUNDS

- 14.1 City will monitor Contractor's expenditures monthly under this Agreement and may reallocate funds in the event Contractor is not making adequate progress toward budget goals, per Exhibit D of this Agreement.
- 14.2 City will provide Contractor with no less than thirty (30) days written notification of its intent to reallocate funds. Contractor shall have opportunity to respond and offer any views and recommendations within the 30-day notification period. City is not bound to accept Contractor's views and/or recommendations with respect to the intended reallocation.

S15 REPORTS

- 16.1 Contractor 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.

S16 TERMINATION OF AGREEMENT

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

16.1 Termination for Convenience

In the event that either the Contractor 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 Contractor 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. Contractor shall be compensated pursuant to the terms of this Agreement for all funds earned up to the point of termination.

16.2 Termination for Cause

City may terminate this Agreement when it has determined that Contractor 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 Contractor of such unsatisfactory performance in writing. Contractor will correct the deficiencies within the timeframe provided by City 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.

16.3 Insufficient Funding

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

S17 SUSPENSION OF FUNDS

City may suspend payments to Contractor under the following circumstances:

- 17.1 Failure to comply in any respect with either the terms and/or conditions of this Agreement.
- 17.2 Submittal by Contractor of reports which are incorrect or incomplete in any substantial and material respect.
- 17.3 Failure of Contractor 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.

S18 WITHHOLDING OF PAYMENTS/REIMBURSEMENTS

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

- 18.1 Contractor, with or without knowledge, shall have made any misrepresentation of a substantial and material nature with respect to any information furnished to City;
- 18.2 There is pending litigation with respect to the performance by Contractor 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;
- 18.3 Contractor is in default under any provision of this Agreement.

S19 DISPUTES

- 19.1 The Contractor agrees to use best efforts to resolve disputes arising from this Agreement by administrative processes and negotiations in lieu of litigation. Contractor agrees to continue performance unless impasse declared.
- 19.2 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 Contractor, in accordance with City's procedures.
- 19.3 Contractor shall have access to the City's Grievance Procedures for the resolution of any complaints or issues not resolved informally.

S20 DISALLOWED COSTS

Except to the extent that the City determines it will assume liability, Contractor 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.

S21 PAYMENT TO SUBCONTRACTOR

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

S22 PROGRAM AGENT POLICIES AND PROCEDURES

- 22.1 Contractor shall comply with City's policies and procedures, and any directive or other bulletin issued which clarify or modify City policies and procedures.

S23 AUDIT REQUIREMENTS

- 23.1 Non-Federal Contractors 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. Contractor 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, Contractor is not subject to these audit requirements.

S24 RECEIPT OF ADDITIONAL FUNDS

Contractor 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.

S25 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 action, whether such action is resolved by adjudication, arbitration or settlement.

S26 INCIDENT REPORTING

Contractor shall establish appropriate internal procedures to prevent and detect fraud, abuse, and other criminal activity relative to WIOA-funded activities and services. Any such incidents detected shall immediately be reported to City's Manager of Job Seeker Services, or in her absence, City's Director of NOVA Workforce Services. Internal procedures must be in writing and include the designation of a person on the Contractor's staff who will be responsible for such notifications.

S27 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 Contractor 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: \$187,000 as of 1/17), 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 Contractor assures and certifies that it will in performing its responsibilities as a Contractor 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**

Contractor 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.
- Contractor shall also comply with *Uniform Guidance* 2 CFR Part 200 and Part 2900 and all other regulations implementing the laws listed above.

Contractor 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).

Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor 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, Contractor 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 Contractor 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. Contractor 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 Contractor learns of a breach in the security of the system which contains confidential data obtained under this Agreement, then Contractor must provide notification to individuals pursuant to Civil Code Section 1798.82.
- f. The Contractor 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 full 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 Contractor enters into an Agreement with a third party to provide services, Contractor 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 Contractor:

(insert name, title, phone number)

4. Contractor makes the following further assurances and certifications:

- a. Contractor 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. Contractor, 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. Contractor 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.
 - 2) Establish a Drug-Free Awareness Program as required 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 that every employee who works on the proposed Agreement:
 - (a) will receive a copy of the Contractor's drug-free statement; and
 - (b) will agree to abide by the terms of the Contractor'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. Contractor 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 Contractor 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 Contractor, 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 Contractor 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. Contractor 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 Contractor 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 Contractor 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 Contractor'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 Contractor 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. Contractor 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 Contractor will be reimbursed for program costs and activities conducted within the scope of this Agreement. The budget under this Agreement shall not exceed a total of \$284,000 as detailed below.

Description	Amount
a. Staff Salaries and Benefits	\$187,750
b. Supportive Services	75,000
c. Indirect Costs	21,250
d. Total	\$284,000

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

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

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.

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.

CITY OF SUNNYVALE – NOVA WORKFORCE SERVICES DEPARTMENT
REQUEST FOR PAYMENT

1. Contractor Name: County of San Mateo
2. Mailing Address: 400 County Center
Redwood City, CA 94063
3. Request Period: From _____ to _____
4. Payment is requested for the following budget items (attach backup documentation):

Description	Total
a. Staff Salaries and Benefits	\$ _____
b. Supportive Services	_____
c. Indirect Costs	_____
d. Total	_____

5. Current Request \$ _____
6. Cumulative Requests \$ _____ (NOVA to calculate)
7. Accrued Expenditures (not yet paid): \$ _____

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: **jlangdell@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.: **510182-5242** \$ _____