

**Memorandum of Understanding between  
Bay Area Community Resources and City of South San Francisco Regarding  
Climate Corps AmeriCorps**

**September 1, 2022 – August 31, 2023**

This MEMORANDUM OF UNDERSTANDING (“Agreement”) is hereby made and entered into by and between Bay Area Community Resources (“BACR”) and City of South San Francisco (“City”), collectively the “Parties.”

**ARTICLE I – OVERVIEW**

BACR is collaborating with public and nonprofit organizations across the state of California to recruit, train, and place Climate Corps AmeriCorps Fellows (“Fellows”) at public and nonprofit organizations, where they will support greenhouse gas reduction programs or other sustainability projects, such as implementing programs that save energy, water, or waste; educating students in classrooms or online; developing Greenhouse Gas Inventories, Climate Action Plans, and other capacity-building documents; and outreach to raise community engagement. Fellows will ideally devote an average minimum of 24 hours per week to directly working on emissions, water, waste, or energy reduction projects.

The Climate Corps AmeriCorps (“CCAC”) program is a specialized track in the Climate Corps Fellowship program that uses AmeriCorps funding to serve environmentally and economically underserved communities across California. This program provides municipalities and nonprofits with cost-effective, high-quality Fellows that advance sustainability programs relating to resource reduction, K-12 education, and community outreach. The fellowship is a program of Bay Area Community Resources in collaboration with Strategic Energy Innovations.

**ARTICLE II – PROJECT OBJECTIVES**

The objectives of the program are as follows:

- City will report measurable reductions in greenhouse gas emissions (“GHGs”), increased efficiency of energy usage, increases in conservation of water, and/or reductions in waste by the end of this placement.
- Climate Corps AmeriCorps Fellows (“Fellows”) may support the City through efforts in community outreach, capacity building climate resiliency projects, and K-12 youth education.
- Fellows will be able to develop a practical skill set and expertise in the realm of climate change management at the community level.
- City communities will be able to increase community participation towards further GHG reductions through volunteer opportunities that are created and/or increased through the participation of the Fellow.

- The Parties will work together to promote the partnership, and its benefits to the Projects and community at large.

### **ARTICLE III – TERM OF AGREEMENT**

This Agreement will become effective as soon as September 1, 2022, but no later than October 3, 2022 (“Effective Date”) and shall continue in full force and effect through August 31, 2023 unless terminated earlier pursuant to Article VII of this Agreement.

The Fellows’ term of service with the City is for a period of eleven (11) months. While working for the City, the Fellow(s) will complete a minimum of 1,700 hours total to receive an end-of-program Segal Education Award of \$6,495.00 and a California for All Education Award of \$3,505.00.

Fellow(s) will devote 80-90% of their time (1,360-1,530 hours) to “Service” (projects agreed upon with the City and detailed in the scope of work) and 10-20% of their time (170-340 hours) to “Training” (structured and independent professional development opportunities including mandatory Climate Corps AmeriCorps events). No more than 20% of time will be spend on “Training”.

If a Fellow is unable to complete the expected number of hours by the end date in the Fellows’ contract (i.e., Member Service Agreement) due to any unforeseen circumstances during their term, they may, at the discretion of BACR and the City, be allowed time to complete their hours at the City, or at another approved host agency where there are service opportunities available. The last day Fellows are eligible to earn hours for the 2022-2023 program year will be August 31, 2023.

### **ARTICLE IV – CCAC FELLOWS ARE NOT EMPLOYEES**

CCAC Fellows are not employees of BACR, the City or the federal government because they qualify for special treatment under the National and Community Service Act of 1990 (“NCSA”).<sup>1</sup> As such, BACR and City mutually agree that they, neither individually nor collectively, intend to create an employment relationship with Fellow, and each agrees not to make statements or otherwise act in a way that suggests such a relationship exists. BACR understands that Fellow shall not be entitled to any benefits made available to City’s employees, including, but not limited to: group health insurance (including dental, vision, and any other enhancements from time to time), disability insurance, group term life insurance, workers’ compensation, or participation in any retirement plan for City’s employees. This provision shall survive the expiration or other termination of this Agreement.

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<sup>1</sup> The definition of “participant” in the National and Community Service Act of 1990 as amended applies to AmeriCorps members: “participant shall not be considered to be an employee of the organization receiving assistance under the national service laws through which the participant is engaging in service” (42 U.S.C. § 12511(30)(B)). However, for the limited purposes of the Family and Medical Leave Act of 1993, the member may be considered an eligible employee of the project sponsor (45 CFR 2540.220(b)).

## **ARTICLE V – ROLES & RESPONSIBILITIES**

### **A. Bay Area Community Resources agrees to:**

1. Be the official employer-of-record for the Climate Corps AmeriCorps Fellow.
2. Pay the Fellow a living stipend of \$2,636.00 per month and provide coverage options for healthcare, childcare, and student loan deferment.
3. Recruit, screen, and select a Climate Corps AmeriCorps Fellow for a commitment of 1,700 hours over a period of eleven (11) months. City will assist in the recruitment and selection of the Fellow, including, without limitation, developing a position description, conducting interviews, and participating in the final selection of the Fellow. The Fellow must be a permanent resident of California by the time required background checks are conducted before the start of the Fellowship.
4. Train and support the Fellow with a comprehensive training program that includes a training manual, a week-long orientation led by an array of experts, monthly trainings, a mid-year retreat, supervision meetings, and two performance reviews.
5. Assign a Regional Supervisor to the City whose main function is to support both the City and the Fellow during the term of service through monthly check-in meetings, email support, professional development resources, and conflict resolution, if necessary.
6. Work with the City to develop a specific scope of work plan for the Fellow that aligns with the GHG reduction initiatives provided by City within the first month of service.
7. Define and develop metrics for the Fellow to measure and track the progress of resource waste reduction, K-12 education, capacity building, and/or community outreach throughout the placement.
8. Define and implement corrections to the Fellow's plan determined to be necessary based on feedback collected from the Fellow and the City.

### **B. The City agrees to:**

1. Assist in the recruitment and selection of Fellow, including developing a position description, conducting interviews, and participating in the final selection.
2. Provide at least one specific GHG reduction initiative that the Fellow can work on during their term of service. Initiatives must be well-defined, approved by the City for implementation, and include specific emissions, water, waste, or energy reduction, and/or education, community outreach, or capacity-building targets, or have the potential to have specifically defined reduction targets in place by the end of the Fellow's term of service. The City will work with BACR to finalize a mutually agreed-upon scope of work no later than one (1) month after the Fellow begins work.
3. Assign a Site Supervisor who will be available to devote at least four (4) hours per month of one-on-one time with the Fellow. The Site Supervisor will be available to support the Fellow and provide specific guidance and tasks as they complete their projects.
4. Complete monthly reporting to BACR in Regional Supervisor check-in meetings, indicating whether progress is being made on the initiatives.
5. Provide feedback on program's effectiveness two times a year, including submission of an evaluation form providing feedback on the Fellow's work performance and data on specific resource or GHG reduction metrics.

6. Attend or send a representative to the Partner Orientation and Mid-Year Call (via webinar).
7. Allow BACR to share results from this program through grant reporting and other means as BACR deems appropriate, provided that BACR first shares the results with the City before releasing the results to any third parties.
8. Ensure that Fellows do not do the following while charging time to the CCAC Program, accumulating service or training hours, or otherwise performing activities supported by the CCAC Program:
  - a. Engage in any activity that is illegal under local, state or federal law;
  - b. Engage in activities that pose a significant safety risk to others;
  - c. Engage in any of the Prohibited Activities outlined in the Policies & Procedures handbook, including, but not limited to:
    - Attempting to influence legislation;
    - Organizing or engaging in protests, petitions, boycotts, or strikes;
    - Assisting, promoting, or deterring union organizing;
    - Impairing existing contracts for services or collective bargaining agreements;
    - Engaging in partisan political activities, or other activities designed to influence the outcome of an election to any public office;
    - Participating in, or endorsing, events or activities that are likely to include advocacy for or against political parties, political platforms, political candidates, proposed legislation, or elected officials;
    - Engaging in religious instruction, conducting worship services, providing instruction as part of a program that includes mandatory religious instruction or worship, constructing or operating facilities devoted to religious instruction or worship, maintaining facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization;
    - Providing a direct benefit to a business organized for profit; a labor union; a partisan political organization; or a nonprofit organization that fails to comply with the restrictions contained in section 501(c)(3) of the Internal Revenue Code of 1986 except that nothing in this section shall be construed to prevent participants from engaging advocacy activities undertaken at their own initiative; and
    - An organization engaged in the religious activities described in paragraph (g) of this section, unless AmeriCorps assistance is not used to support those religious activities;
    - Conducting a voter registration drive or using AmeriCorps-funded time to conduct a voter registration drive;
    - Providing abortion services or referrals for receipt of such services; and
    - Such other activities as the AmeriCorps may prohibit.
  - d. AmeriCorps members may support fundraising and resource-gathering for direct support of their program's service activities, but with restrictions:
    - Examples of fundraising activities AmeriCorps members may perform include, but are not limited to, the following:

- Seeking donations of books from companies and individuals for a program in which volunteers teach children to read;
  - Support research and writing of a grant proposal to a foundation to secure resources to support the training of volunteers;
  - Securing supplies and equipment from the community to enable volunteers to help build houses for low-income individuals;
  - Securing financial resources from the community to assist in launching or expanding a program that provides social services to the members of the community and is delivered, in whole or in part, through the members of a community-based organization;
  - Seeking donations from alumni of the program for specific service projects being performed by current members.
  - AmeriCorps members may not:
    - Raise funds for living allowances or for an organization's general (as opposed to project) operating expenses or endowment;
    - Write a grant application to the Corporation or to any other Federal agency.
    - Spend more than 10% of their term of service performing fundraising activities.
  - e. Individuals may exercise their rights as private citizens and may participate in the activities listed above on their initiative, on non-AmeriCorps time, and using non-AmeriCorps funds.
9. Support and encourage the promotion of National Service through the following:
- a. Posting AmeriCorps and National Service information at all service sites
  - b. Posting a list of the above Prohibited Activities at all service sites
  - c. Holding Fellows accountable for wearing appropriate uniforms or AmeriCorps pin as required by BACR
  - d. Authorizing Fellows to leave the program site to participate in pre-arranged National Service identity activities and monthly training days.
  - e. Authorizing Fellows to spend up to a maximum of 20% of their total hours on thematic professional development activities (including regular monthly programmatic training days).
10. Consider providing program-wide support by either
- a. Facilitating at least one (1) all-day training event for all Fellows or,
  - b. Speaking during a session at one (1) all-day training event for all Fellows

## **ARTICLE VI – PAYMENT**

The City will provide BACR with fourteen thousand dollars and no cents (\$14,000) per Fellow, and requests one (1) Fellow for the 2022-2023 program year for a total payment amount of \$14,000 to support the implementation of the program. The City will receive invoices one month prior to the scheduled payment date. This payment will be made according to the following schedule:

- Payment 1:
  - Due: November 30, 2022
  - Amount: \$7,000

- Payment 2:
  - Due: January 31, 2023
  - Amount: \$3,500
- Payment 3:
  - Due: March 31, 2023
  - Amount: \$3,500

## **ARTICLE VII – FELLOW RECRUITMENT, HIRING, AND TERMINATION**

It is mutually agreed upon by all Parties to this Agreement that:

- If the City ultimately fails to select a Fellow, City will pay BACR a \$2,500 fee (included in the total cost) for the recruiting effort promptly following receipt of an invoice from BACR.
- The Parties will explore reasonable next steps for recruitment in the event that BACR is unable to place a qualified Fellow at the City by the final possible start date. Next steps include a shorter term of service with corresponding lower payment amount (dependent on availability), postponement to future term of service, or whatever solution is deemed most beneficial to the Parties.
- In the event that a Fellow is hired to begin after the start of the program, the full match will still be required. All full-time Fellows receive the same benefits and are expected to finish the term of service regardless of their start date so the cost remains the same.
- City agrees to not hire the Fellow as a full-time employee until and unless the Fellow completes their entire term of service described in this Agreement. If the City hires the Fellow before the end of the program year, City is subject to a \$2,500 fine for the time and resources spent on recruiting, training, and supporting the Fellow. BACR agrees to recruit another Fellow to complete the term of service if the City desires, in which case the City must still pay BACR for the services described in this Agreement and according to the payment schedule outlined in Section VI (Payment). In the event that the City does not desire a replacement Fellow, effectively ending the term of service, the City is subject to a \$2,500 fine for exiting the contract before the agreed upon end date and a \$2,500 fine for the time and resources spent on recruiting and training the Fellow, amounting to a total fine of \$5,000. The City will not be reimbursed for payments already made to BACR.
- In the event that a Fellow leaves the program for any reason aside from being hired as a full-time employee of the City, prior to the end date in the Fellow's contract (i.e. Member Service Agreement), a pro-rated amount will be issued for match funds up until April 30, 2023. Pro-rated amounts are determined by the following equation: Total partner match divided by number of total stipend payments planned for the Fellow multiplied by actual number of stipend payments distributed. The match is used throughout the year for Fellow stipends, benefits, training, and programmatic costs; all Agency match funds will have been absorbed by the program by the April 30, 2023 deadline so no pro-rated amount will be issued after that date. If the Fellow has found new employment outside of the Fellowship after leaving the program prior to April 30, 2023, the pro-rated match funds amount will be adjusted to be issued up until the Fellow's start date at their new employer.

## **ARTICLE VIII – MODIFICATION**

It is mutually agreed by all Parties to this Agreement that:

- The Parties will review the effectiveness of the Agreement after each participating year and evaluate potential modifications that more adequately address the purpose of this Agreement.
- In the event that a Party no longer approves implementation of any of the provisions referenced in this Agreement, the individual Parties agree to promptly confer to determine what, if any, modifications to this Agreement should be made to address the issue(s) of concern.
- In the event that a Party no longer desires to be a part of this Agreement or any modification(s), then the individual Party in their sole discretion may terminate their relationship within this Agreement. Written notice must be provided by the Party desiring to withdraw from the Agreement at least thirty (30) days prior to termination.
- In the event that a Party no longer approves implementation of any of the provisions referenced in this Agreement, the individual Parties agree to promptly confer to determine what, if any, modifications to this Agreement should be made to address the issue(s) of concern.

This Agreement may be amended by mutual agreement of the parties. Such amendments shall only be effective if incorporated in written amendments to this Agreement and executed by duly authorized representatives of the Parties.

## **ARTICLE IX – LIABILITY**

Each Party agrees that it will be responsible for its own acts and the results thereof and shall not be responsible for the acts of the other Party and the results thereof. Each Party, therefore, agrees that it will assume all risk and liability to itself, its agents or employees, for any injury to persons or property resulting in any manner from the conduct of its own operations, and the operation of its agents or employees under this Agreement. The City's liability shall be governed by the provisions of the California Government Claims Act, which applies to public entities such as state, county, and local government agencies or departments, as well as to government employees.<sup>2</sup>

## **ARTICLE X – INDEMNIFICATION**

BACR shall to the fullest extent allowed by law, with respect to all services performed in connection with this Agreement, indemnify, defend and hold harmless the City of South San Francisco and its officials, commissioners, officers, employees, agents, and volunteers from and against any and all claims that arise out of, pertain to or relate to the negligence, recklessness or willful misconduct of BACR. BACR shall bear all losses, costs, damages, expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such claims, whether directly or indirectly ("Liabilities"). BACR shall also to the fullest extent allowed by

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<sup>2</sup> Cal. Gov't Code §§ 810 – 996.6 (1963).

law, indemnify and defend the City from all liabilities resulting from a determination by CalPERS that the Fellow is an employee of the City and required to be enrolled in the retirement system. Such obligations to defend, hold harmless and indemnify the City shall not apply to the extent that such Liabilities are caused by the sole negligence, active negligence, or willful misconduct of the City.

## **ARTICLE XI – INSURANCE**

BACR agrees to procure and maintain for the duration of this Agreement insurance against claims for which BACR has indemnified the City pursuant to Article X of this Agreement: BACR shall maintain: (1) commercial general liability insurance with minimum limits of \$1,000,000 per occurrence for bodily injury, personal injury and property damage which may arise from or in connection with the performance of BACR's Services hereunder or from or out of any act or omission of BACR, its officers, directors, agents, subcontractors or employees; (2) worker's compensation insurance as required by law; and (3) hired and non-owned auto insurance with minimum limits of \$1,000,000 for each accident.

Each insurance policy shall name the City as an additional insured and it shall be endorsed to state that: (1) coverage shall not be suspended, voided, or cancelled by either party, or reduced in coverage or in limits except after thirty (30) calendar days prior written notice by certified mail, return receipt requested, has been given to City; and (2) for any covered claims, the BACR's insurance coverage shall be primary insurance as respects the City and any insurance or self-insurance maintained by the City shall be in excess of the BACR's insurance and shall not contribute with it. The insurance required to be provided herein, shall be procured by an insurance company approved by City, which approval shall not be unreasonably withheld. If requested, BACR shall provide a certificate of said insurance and an additional insured endorsement to the City within ten (10) days of the execution of this Agreement.

## **ARTICLE XII – KEY OFFICIALS**

The individuals listed below are identified as key personnel considered essential to the project being performed under this Agreement:

### For BACR:

Job Title: Director of National Service  
Name: Adolfo Rivera  
Address: 11175 San Pablo Ave, El Cerrito, CA 94530  
Phone Contact: (510) 559-5550  
Email Contact: arivera@bayac.org

### For City:

Job Title: Management Analyst II  
Name: Tamiko Huey  
Address: 400 Grand Ave, South San Francisco, CA 94080  
Phone Number: 650-515-9792  
Email Contact: tamiko.huey@ssf.net

No change in key officials will be made by either BACR or the City without written notification in advance of the proposed change, which include an explanation with sufficient detail to permit assessment of the impact on the Fellow's scope of work.

#### **ARTICLE XIII – APPLICABLE LAW**

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

#### **ARTICLE XIV – COUNTERPARTS**

This Agreement may be executed simultaneously or in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

IN WITNESS HEREOF, the parties hereto have executed this Agreement on the date(s) set forth below.

**BAY AREA COMMUNITY RESOURCES**

DocuSigned by:  
*Adolfo Rivera*  
By: \_\_\_\_\_  
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Adolfo Rivera  
Director of National Service

August 10, 2022 | 7:50:02 PM PDT  
\_\_\_\_\_  
Date

**CITY OF SOUTH SAN FRANCISCO**

DocuSigned by:  
*Mike Futrell*  
By: \_\_\_\_\_  
6852134787CA4DB...  
Mike Futrell  
City Manager

August 11, 2022 | 8:59:47 AM PDT  
\_\_\_\_\_  
Date

**APPROVED AS TO FORM**

DocuSigned by:  
*Clair Lai*  
By: \_\_\_\_\_  
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Sky Woodruff  
City Attorney

August 11, 2022 | 8:36:36 AM PDT  
\_\_\_\_\_  
Date

**ATTEST**

DocuSigned by:  
*Rosa Govea Acosta*  
By: \_\_\_\_\_  
5908B15FF83F418...  
Rosa Govea Acosta  
City Clerk  
5147724.2



August 18, 2022 | 3:18:54 PM PDT  
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Date