

MEMORANDUM OF UNDERSTANDING BY AND BETWEEN CITY OF ONTARIO AND SAN BERNARDINO COUNTY FOR CAREER SERVICES IN ONTARIO

This Memorandum of Understanding (“MOU”) is entered into on this 1st day of July 2022 (“Effective Date”), by and between the City of Ontario (“City”) and San Bernardino County (“County”) through its Workforce Development Department (“WDD”). City and County may sometimes be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, City was previously awarded the Transformative Climate Communities state grant, which made funding available for a Workforce Development Specialist to provide career services to Ontario residents at the City’s Ovitt Family Community Library (“Ovitt Library”); and

WHEREAS, WDD seeks to serve the unemployed and the underemployed, by providing career services to County residents seeking job placement or training assistance to increase economic stability; and

WHEREAS, WDD aims to provide reliable career services to make a positive difference in the lives of Ontario residents, who are County residents; and

WHEREAS, the City wants to continue to make career services available to Ontario residents; and

WHEREAS, the Parties previously entered into a memorandum of understanding using the Transformative Climate Communities grant funding for a term of July 2019 to January 2022. During the term of the previous memorandum of understanding, WDD provided career services to 1,116 Ontario residents and assisted 77 Ontario residents with job placements; and

WHEREAS, City and County desire entering into this MOU for the purpose of defining their respective roles in continuing to provide career services to Ontario residents in the absence of the Transformative Climate Communities grant funding.

NOW, THEREFORE, in consideration of the promises set forth herein, the receipt and adequacy of which is hereby acknowledged, City and County hereby agree the following terms and conditions:

1. Incorporation of Recitals. The recitals above are true and correct and are hereby incorporated herein by this reference.

2. Definitions.

(A) City – The City of Ontario, California.

(B) County –San Bernardino County.

(C) Workforce Development Department (“WDD”) – The San Bernardino County Workforce Development Department operates programs under the guidance of the Workforce

Development Board. WDD implements comprehensive strategies to meet the needs of local businesses for a skilled workforce, while creating opportunities for workers to prepare for and enter into well-paid careers.

(D) **Workforce Development Specialist (“WDS”)** – Workforce Development Specialist provides services such as interviewing, screening, counseling regarding employment barriers, conducting job readiness, and motivation workshops to County residents.

(E) **Workforce Innovation and Opportunity Act (“WIOA”)** – The Workforce Innovation and Opportunity Act, signed into law in 2014, is designed to strengthen and improve our nation’s public workforce system. The law focuses on helping Americans, including youth and those with significant barriers to employment, gain access to high-quality jobs and careers.

3. **City Responsibilities.** City agrees to provide WDD a space within a City facility for WDD to establish a WDD satellite office (“Satellite Office”) to provide WIOA career services to Ontario residents. Currently, the City provides WDD a space within the Ovitt Library for WDD to operate a Satellite Office to provide such services. As of the Effective Date of this MOU, the City agrees to allow WDD to continue operating a Satellite Office in the Ovitt Library, but reserves the right to provide WDD an alternative City facility in the City’s sole discretion.

4. **WDD Responsibilities.** WDD agrees to establish a Satellite Office in the City at the City’s designated facility to provide WIOA career services to Ontario residents. WDD shall provide the City monthly statistical reports that document services provided to Ontario residents, including, but not limited to, the number of Ontario residents served, the number of various services provided, and the number of jobs secured for Ontario residents. WDD agrees to operate the Satellite Office without any financial contribution from the City for the salary of the WDD employee(s) providing services at the Satellite Office. The WIOA career services WDD agrees to provide through the Satellite Office are more particularly described in Exhibit A, attached hereto and incorporated herein by this reference.

5. **Compliance with Law.** The Parties’ actions under the MOU shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. Each Party shall comply with all applicable federal, state, and local orders, advisories, and guidelines on COVID-19 related workplace restrictions and notification obligations, including but not limited to those from the Center for Disease Control and Prevention, the California Department of Public Health, the California Division of Occupational Safety and Health, County, or any other applicable government entity.

6. **Notice of Delays.** Except as otherwise provided herein, when either Party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this MOU, that Party shall within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other Party.

7. **Mutual Indemnification.**

County agrees to indemnify, defend (with counsel reasonably approved by the City) and hold harmless the City and its elected officials, officers, employees, agents, and volunteers, at the County’s sole expense, from and against any and all claims actions, losses, damages, liability,

and/or legal proceedings brought against the City, its elected officials, officers, employees, agents, and volunteers arising out of the performance of the County under this MOU.

City agrees to indemnify, defend (with counsel reasonably approved by the County) and hold harmless the County and its elected officials, officers, employees, agents, and volunteers, at the City's sole expense, from and against any and all claims actions, losses, damages, liability, and/or legal proceedings brought against the County, its elected officials, officers, employees, agents, and volunteers arising out of the performance of the City under this MOU.

Notwithstanding the foregoing, neither Party shall be liable for the defense or indemnification of the other Party for claims, actions, complaints, or suits arising out of the sole active negligence or willful misconduct of the other Party.

In the event that both Parties are found to be comparatively at fault for any claim, action, loss, or damage which results from their respective obligations under this MOU, the Parties shall indemnify the other to the extent of its comparative fault. In the event of litigation arising from this MOU, each Party shall bear its own costs, including attorney's fees.

8. Waiver. No delay or omission in the exercise of any right or remedy of a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. Either Parties' consent or approval of any act by the other Party requiring its consent or approval shall not be deemed to waive or render unnecessary its consent to or approval of any subsequent act of the other Party. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this MOU.

9. Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this MOU shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this MOU which are hereby declared as severable and shall be interpreted to carry out the intent of the Parties hereunder.

10. Governing Law and Venue. This MOU shall be governed by the laws of the State of California without regard to conflicts of laws principles. The Parties acknowledge and agree that this MOU was entered into and intended to be performed in San Bernardino County, California. The Parties agree that the venue of any action or claim brought by any Party to this MOU will be the Superior Court of California, County of San Bernardino, San Bernardino District. Each Party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this MOU is brought by any third party and filed in another venue, the Parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino District.

11. Insurance. The County shall provide proof of insurance to the City prior to beginning providing the services under this MOU.

Minimum Limits of Insurance. The County shall maintain limits no less than: (1) General Liability \$2,000,000 per occurrence \$4,000,000 aggregate for bodily injury, personal injury and property damage. and (2) Workers' Compensation and Employer's Liability: Workers'

Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease. Defense costs shall be paid in addition to the limits.

General Liability. The general liability policy shall include or be endorsed (amended) to state that: (1) using ISO CG forms 20 10 and 20 37, or endorsements providing the exact same coverage, the City of Ontario, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to the Services or ongoing and complete operations performed by or on behalf of the County, including materials, parts or equipment furnished in connection with such work; and (2) using ISO form 20 01, or endorsements providing the exact same coverage, the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the County's scheduled underlying coverage. Any excess insurance shall contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of the City, before the City's own primary insurance or self-insurance shall be called upon to protect it as a named insured. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of the County's insurance and shall not be called upon to contribute with it in any way. Any available insurance proceeds in excess of the specified minimum limits of coverage specified in this Section 11 shall be available to the parties required to be named as additional insureds pursuant to this Section 11.

12. County Representative. The WDD Director or his/her designee shall represent the County in all matters pertaining to this MOU. The WDD Director or his/her designee is delegated the authority to amend this MOU to add no-cost services to Exhibit A and to terminate this MOU in accordance with the termination provisions herein.

13. Relationship of the Parties. Nothing contained in this MOU shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power, or authority to create an obligation or duty, express or implied, on behalf of the other Party hereto.

14. Debarment and Suspension. County certifies that neither it nor its principals or subcontractors is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). County further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

15. Drug and Alcohol Free Workplace. In recognition of individual rights to work in a safe, healthful and productive workplace, as a material condition of this MOU, the County agrees that the County and the County's employees, while performing service for the City, on City property, or while using City or County equipment:

- (A) Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.
- (B) Shall not possess an open container of alcohol or consume alcohol or possess or be

under the influence of an illegal or controlled substance.

- (C) Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where County or County's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

The County shall inform all employees that are performing service for the City on City property, or using City or County equipment, of the City's and County's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the City.

The City may terminate for default or breach of this MOU and any other contract the County has with the City, if the County or County's employees are determined by the City not to be in compliance with above.

16. Employment Discrimination. During the term of the MOU, County shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. County shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VI and Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

17. Environmental Requirements. In accordance with County Policy 11-08, the County prefers to acquire and use products with higher levels of post-consumer recycled content. Environmentally preferable goods and materials must perform satisfactorily and be available at a reasonable price. The County shall use recycled paper for any printed or photocopied material created as a result of this MOU. County is also required to use both sides of paper sheets for reports submitted to the City whenever practicable.

To assist the County in meeting the reporting requirements of the California Integrated Waste Management Act of 1989 (AB 939), County must document its environmentally preferable purchases. County must also document environmentally preferable goods and materials used in the provision of its service to the City, utilizing a County approved form.

18. Consumer Privacy. To the extent applicable, if County is a business that collects the personal information of a consumer(s) in performing Services pursuant to this MOU, County must comply with the provisions of the California Consumer Privacy Act (CCPA). (Cal. Civil Code §§1798.100, et seq.). For purposes of this provision, "business," "consumer," and "personal information" shall have the same meanings as set forth at Civil Code section 1798.140. County must contact the City immediately upon receipt of any request by a consumer submitted pursuant to the CCPA that requires any action on the part of the City, including but not limited to, providing a list of disclosures or deleting personal information. County must not sell, market or otherwise

disclose personal information of a consumer provided by the City unless specifically authorized pursuant to terms of this MOU. County must immediately provide to the City any notice provided by a consumer to County pursuant to Civil Code section 1798.150(b) alleging a violation of the CCPA, that involves personal information received or maintained pursuant to this MOU. County must immediately notify the City if it receives a notice of violation from the California Attorney General pursuant to Civil Code section 1798.155(b) concerning the Services provided under this MOU.

19. Air, Water Pollution Control, Safety and Health. County shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, which apply to the work performed pursuant to this MOU.

20. Equal Opportunity Requirements. County agrees to comply with the provisions of the Equal Employment Opportunity Program of San Bernardino County and rules and regulations adopted pursuant thereto: Executive Order 11246 (as amended by Executive Orders 11375, 11625, 12138, 12432, and 12250); Title VII of the Civil Rights Act of 1964; Division 21 of the California Department of Social Services Manual of Policies and Procedures; California Welfare and Institutions Code section 10000), the California Fair Employment and Housing Act; and other applicable federal, state, and county laws, regulations and policies relating to equal employment or social services to welfare recipients, including laws and regulations hereafter enacted.

The County shall not unlawfully discriminate against any employee, applicant for employment, or service recipient on the basis of race, color, national origin or ancestry, religion, gender, marital status, sexual orientation, age, political affiliation or disability. Information on the above rules and regulations may be obtained from the County Human Services Contracts Unit.

- (A) Compliance – County shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. County shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VI and Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted. The "Equal Opportunity is the Law" notice, which explains the nondiscrimination and equal opportunity provisions of WIOA and other similar federal programs, shall be provided to each Customer. All complaints that allege discrimination on the bases listed above will be referred to the City and the WDD Equal Opportunity Officer for action.
- (B) Civil Rights Compliance – The County shall develop and maintain internal policies and procedures to assure compliance with each factor outlined by state regulation. These policies must be developed into a Civil Rights Plan, which is to be on file with the City and the County Human Services Contracts Unit within thirty (30) days of the execution of this MOU. The Plan must address prohibition of

discriminatory practices, accessibility, language services, staff development and training, dissemination of information, complaints of discrimination, compliance review, and duties of the Civil Rights Liaison. Upon request, the County shall supply a sample of the Plan format. The County shall be monitored by the City and the County for compliance with provisions of its Civil Rights Plan.

- (C) County agrees to comply with all applicable provisions of the Americans with Disabilities Act (ADA).
- (D) County shall observe the mandatory standards and policies relating to energy efficiency in the State Energy Conservation Plan (California Code of Regulations title 20, section 1401 et seq.).
- (E) If the value of this MOU exceeds one hundred thousand dollars (\$100,000), County agrees to comply with the Clean Air Act (42 U.S.C. Section 7606), section 508 of the Clean Water Act (33 U.S.C. section 1368), Executive Order 11738 and Environmental Protection Agency regulations (40 C.F.R. section 1.1 et seq.).

21. Compliance With Laws and Regulations. The County warrants and certifies that, in the performance of this MOU, it shall comply with all applicable laws, rules, and regulations of the United States, the State of California, and the County. The County further warrants and certifies that it shall comply with any new, amended, or revised laws, regulations and/or procedures that apply to the performance of this MOU.

Examples of applicable laws, rules, or regulations include, but are not limited to, the following:

- (A) County administrative procedures and technical assistance released in the form of field memorandums and policy manuals.
- (B) Copeland Act (Anti-Kickback) and Hobbs Act (Anti-Corruption).
- (C) Davis-Bacon Act of 1931 and Fair Labor Standards Act of 1938, as amended.
- (D) Hatch Act of 1939, as amended October 1993 and California Political Reform Act of 1974.
- (E) Equal Pay Act of 1963.
- (F) Age Discrimination Act of 1975, and Age Discrimination in Employment Act.
- (G) Military Selective Service Act, Section 3.
- (H) Rehabilitation Act of 1973, and Americans with Disabilities Act of 1990.

- (I) Title IX of the Education Amendments of 1972 (Non-Discrimination on the Basis of Sex).
- (J) Immigration Reform and Control Act of 1986.
- (K) Executive Order 12549 (Debarment, Suspension, and Exclusion).
- (L) Child Labor Laws in California; Child Labor Standards Act; Family and Medical Leave Act of 1993; Assembly Bill 1900 of January 1995: Employment of Minors.
- (M) Drug-Free Workplace Act of 1988.
- (N) Anti-Lobbying and Disclosure of Lobbying Activities. No funds related to this MOU may be to pay any person for influencing or attempting to influence an officer or employee of an agency, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: 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.
- (O) Pro-Children Act of 1994 - The County will comply with Public Law 103-227, Part C – Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994.
- (P) Michelle Montoya School Safety Act of 1997.

22. Term. This MOU shall be effective July 1, 2022 through June 30, 2025 but may be terminated earlier in accordance with the termination provisions of this MOU herein.

23. Duration of Terms. This MOU, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective Parties, provided no such assignment is in violation of the provisions of this MOU.

24. Termination. Either Party may terminate this MOU, for any reason, with a thirty (30) day written notice of termination.

25. Notices. All written notices provided for in this MOU or which either Party desires to give to the other Party shall be deemed fully given, when made in writing and either served personally, or by facsimile, or deposited in the United States mail, postage prepaid, and addressed to the other Party as follows:

San Bernardino County

Workforce Development Department
Attn: Bradley Gates
290 North D Street, Suite 600
San Bernardino, CA 92415
Brad.Gates@wdd.sbcounty.gov
909-387-9862

City of Ontario

Economic Development Department
Attn: Peter Pallesen
303 East B Street
Ontario, CA 91764
PPallesen@ontarioca.gov
909-395-2333

26. Entire Agreement. This MOU, including all Exhibits and other attachments, represents the final, complete, and exclusive agreement between the Parties hereto. Any prior agreement, promises, negotiations, or representations relating to the subject matter of this MOU not expressly set forth herein are of no force or effect. This MOU is executed without reliance upon any promise, warranty, or representation by any Party or any representative of any Party other than those expressly contained herein. Each Party has carefully read this MOU and signs the same of its own free will.

27. Informal Dispute Resolution. In the event of any dispute, claim, question or disagreement arising from or relating to this MOU or breach thereof, the Parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both Parties.

28. Attorney's Fees and Costs. If any legal action is instituted to enforce any Party's rights hereunder, each Party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a Party hereto and payable under Indemnification and Insurance Requirements herein.

29. Subpoena. In the event that a subpoena or other legal process commenced by a third party in any way concerning the services to be provided under this MOU is served upon City or County, such Party agrees to notify the other Party in the most expeditious fashion possible following receipt of such subpoena or other legal process. City and County further agree to cooperate with the other Party in any lawful effort by such other Party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the Party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by City or County.

30. Time of the Essence. Time is of the essence in performance of this MOU and of each of its provisions.

31. Modifications. The Parties agree that any alterations, variations, modifications, or waivers of the provisions of the MOU, shall be valid only when reduced to writing, executed and attached to the original MOU.

32. Authority. Each signatory to this MOU hereby warrants that he or she has the authority to sign on behalf of the Party for which he or she is signing.

33. Counterparts; Electronic Signatures. The Parties agree that this MOU may be executed in counterparts, each of which shall be deemed to be an original, but both of which together shall constitute one and the same instrument, and that a photocopy or facsimile may serve as an original. If this MOU is executed in counterparts, no signatory hereto shall be bound until both the parties have fully executed a counterpart of this MOU. The Parties shall be entitled to sign and transmit an electronic signature of this MOU (whether by facsimile, PDF, or other email transmission), which signature shall be binding on the party whose name is contained therein. Each Party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed MOU upon request.

[signatures on following page]

**SIGNATURE PAGE TO MEMORANDUM OF UNDERSTANDING BY AND BETWEEN
CITY OF ONTARIO AND SAN BERNARDINO COUNTY FOR CAREER SERVICES IN
ONTARIO**

IN WITNESS WHEREOF, the Parties hereto have caused this Memorandum of Understanding to be entered into as of the date set forth above.

CITY OF ONTARIO

By: _____
Scott Ochoa, City Manager

Dated: _____

APPROVED AS TO LEGAL FORM:

By: _____
Best Best & Krieger LLP
City Attorney

ATTEST

By: _____
City Clerk

SAN BERNARDINO COUNTY

By: _____
Curt Hagman, Chairman

Dated: _____

SIGNED AND CERTIFIED THAT A
COPY OF THIS DOCUMENT HAS BEEN
DELIVERED TO THE CHAIRMAN OF
THE BOARD

Lynna Monell
Clerk of the Board of Supervisors of
San Bernardino County

By: _____

APPROVED AS TO LEGAL FORM:

Name: Sophie A. Akins
Title: Deputy County Counsel

Date:

EXHIBIT A
WDD CAREER SERVICES TO BE PROVIDED

WDD shall administer a workforce development program in the City of Ontario by creating pathways for Ontario residents to secure education/certification for green and healthcare jobs, and to ultimately find employment in those sectors. WDD shall:

- A. Enroll Ontario residents into WIOA programs;
- B. Provide case management, training, and other employment related services to Ontario residents;
- C. Provide an existing WDS to offer WIOA services in a satellite office location (location provided by the City) for 40 hours per week;
- D. Provide referrals to, and funding for, Ontario residents to receive vocational and other forms of training, that will help lead them to employment, or better employment;
- E. Provide referrals to, and funding for, residents to receive supportive services and other resources, that will help lead them to employment, or better employment;
- F. Provide job preparation and other types of workshops within Ontario that assist Ontario residents in becoming better prepared for employment and competitiveness in the job market;
- G. Provide opportunities through the WIOA Youth Program to students who live within Ontario;
- H. Through the existing WIOA Business Services Program, provide a Business Services Specialist to serve businesses located within Ontario in order to assist them with hiring and training new employees, especially those who may live within Ontario as well;
- I. Provide funding for On-the-Job Training (“OJT”) opportunities for Ontario residents who become employed by Ontario businesses;
- J. Work collaboratively with the City and other partners, when practicable, in the support of new business relocation and existing business expansion within Ontario;
- K. Require Ontario residents who enroll in WIOA programs to sign a data release authorization form; and
- L. Provide other related services as mutually agreed upon during the Term of this MOU.