PROJECT AGREEMENT
BETWEEN
THE BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY SYSTEM,
on behalf of
CALIFORNIA STATE UNIVERSITY EAST BAY
and
XXXX

This Project Agreement (“Agreement”) is entered into on this _______ day of
____________________________________, 2017 ___ by and between XXX and the Board of Trustees of the California
State University system, on behalf of California State University East Bay, Sage Project
(“CSUEB”).

RECITALS

WHEREAS, XXX and CSUEB entered into a Memorandum of Understanding (“MOU”) dated XX, 2017, which outlines the general parameters of the collaboration between XXX and CSUEB; and

WHEREAS, the MOU states that XXX and CSUEB will enter into a separate Project Agreement for each project; and

WHEREAS, XXX and CSUEB desire to enter into this Project Agreement for ___.

NOW THEREFORE, in consideration of the Recitals and the terms and conditions set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, XXX and CSUEB agree as follows:

AGREEMENT

1. **ENGAGEMENT OF CSUEB.** XXX agrees to engage CSUEB, and CSUEB agrees to perform the services set forth in this Agreement in accordance with all terms and conditions contained herein.

2. **SCOPE OF SERVICES.** CSUEB shall assist XXX with the development of projects and programs that enhance the health and safety of the XXX’s residents. CSUEB will perform services as set forth in Attachment “A”.

3. **PROJECT COORDINATION AND SUPERVISION.** _________ is designated as the Project Coordinator for XXX and will monitor the progress and execution of this Agreement. CSUEB shall assign a single Project Coordinator to provide supervision and
have overall responsibility for the progress and execution of this Agreement for CSUEB. _________ is designated as the Project Coordinator for CSUEB.

4. **COMPENSATION AND PAYMENT.** The total cost for all work described in Attachment “A” shall be ______. Payment shall be in one lump sum and is due upon completion of the services as set forth in Exhibit “A”. This payment is the only financial responsibility of XXX. XXX shall not be responsible for any other expenses related to the performance of the services pursuant to this Agreement.

5. **EFFECTIVE DATE AND LENGTH OF AGREEMENT.** This Agreement will become effective on __________. The duration of this Agreement is for the period of __________ through __________. Completion dates or time durations for specific portions of the Project are set forth in Attachment “A”.

6. **INDEPENDENT CONTRACTOR.** Both parties in the performance of this Agreement will be acting in an independent capacity and not as agents, employees, partners, or joint venturers with one another. CSUEB’s employees and students are not employees of XXX, and are not entitled to any of the rights, benefits, or privileges of XXX’s employees, including but not limited to retirement, medical, unemployment, or workers’ compensation insurance.

7. **CONTROL.** Neither XXX nor its officers, agents, or employees shall have any control over the conduct of CSUEB or any of CSUEB’S employees, students, or volunteers, except as herein set forth, and CSUEB or CSUEB’s agents, servants, employees, students, or volunteers are not in any manner agents, servants, or employees of XXX, it being understood that CSUEB, its agents, servants, employees, students, and volunteers are as to XXX wholly independent contractors, and that CSUEB’s obligations to XXX are solely such as are prescribed by this Agreement.

8. **ASSIGNMENT.** Neither this Agreement nor any interest herein may be assigned by CSUEB without the prior written consent of XXX. CSUEB shall not subcontract to any other person, entity or agency the performance of any of its obligations under this Agreement without the prior written consent of XXX.

9. **COMPLIANCE WITH APPLICABLE LAW.** CSUEB, in the performance of the services to be provided herein, shall comply with all applicable state and federal statutes and regulations, and all applicable ordinances, rules, and regulations of XXX, whether now in force or subsequently enacted.

10. **NON-DISCRIMINATION PROVISIONS.** CSUEB shall not discriminate against any employee or applicant for employment because of age, race, color, ancestry, religion, sex, sexual orientation, marital status, national origin, physical handicap, or medical condition. CSUEB will take positive action to ensure that applicants are employed without regard to their
age, race, color, ancestry, religion, sex, sexual orientation, marital status, national origin, physical handicap, or medical condition. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

11. **CONFIDENTIAL INFORMATION.** XXX may from time to time communicate to CSUEB certain confidential information to enable CSUEB to effectively perform the services to be provided herein. Such confidential information shall be in writing and shall be clearly marked as “CONFIDENTIAL INFORMATION” on the face of such document. CSUEB shall treat all such information as confidential and shall not disclose any part thereof without the prior written consent of the XXX. CSUEB shall limit the use and circulation of such information, even within its own organization, to the extent necessary to perform the services to be provided herein. The foregoing obligation of this Section 11, however, shall not apply to any part of the information that (i) has been disclosed in publicly available sources of information; (ii) is, through no fault of CSUEB, hereafter disclosed in publicly available sources of information; (iii) is already in the possession of CSUEB without any obligation of confidentiality; or (iv) has been or is hereafter rightfully disclosed to CSUEB by a third party, but only to the extent that the use or disclosure thereof has been or is rightfully authorized by that third party.

If CSUEB receives a request for documents pursuant to the California Public Records Act, California Government Code sections 6250 through 6259, which CSUEB received from XXX regarding the subject matter of this Agreement, CSUEB shall notify XXX as soon as possible to give XXX the opportunity to object and seek any appropriate relief. In its performance hereunder, CSUEB shall comply with all legal obligations it may now or hereafter have respecting the information or other property of any other person, firm or corporation.

12. **INDEMNIFICATION AND HOLD HARMLESS.**

A. The California State University and CSUEB agree to defend, indemnify and hold harmless XXX, its officers and employees, agents, and volunteers against and from any and all liability, loss, damages to property, injuries to, or death of any person or persons, and all claims, demands, suits, actions, proceedings, reasonable attorneys’ fees, and defense costs, of any kind or nature, including workers’ compensation claims, of or by anyone whomsoever, resulting from or arising out of the California State University’s and CSUEB’s performance or other obligations under this Agreement; provided, however, that this indemnification and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of XXX, its agents, officers, employees, or volunteers. The indemnity, defense, and hold harmless obligations contained herein shall survive the termination of this
Agreement for any alleged or actual omission, act, or negligence under this Agreement that occurred during the term of this Agreement.

B. XXX agrees to defend, indemnify and hold harmless the California State University and CSUEB, their trustees, officers, employees, agents, and volunteers against and from any and all liability, loss, damages to property, injuries to, or death of any person or persons, and all claims, demands, suits, actions, proceedings, reasonable attorneys’ fees, and defense costs, of any kind or nature, including workers’ compensation claims, of or by anyone whomsoever, resulting from or arising out of XXX performance or other obligations under this Agreement; provided, however, that this indemnification and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the California State University and CSUEB, their trustees, agents, officers, employees, or volunteers. The indemnity, defense, and hold harmless obligations contained herein shall survive the termination of this Agreement for any alleged or actual omission, act, or negligence under this Agreement that occurred during the term of this Agreement.

13. STATUS OF STUDENTS. Students are not officers, agents, or employees of CSUEB. Students are not officers, agents, or employees of XXX.

14. INSURANCE.

A. The California State University system has elected to be insured for its General Liability exposure through the self-insured CSU Risk Management Authority.

B. The State of California has elected to be self-insured for its vehicle liability and Workers’ Compensation and property exposures. As a State agency, the California State University, Office of the Chancellor, the Trustees, and the CSU system of campuses are included in this self-insured program.

C. All California State University system and CSUEB insurance requirements met by self-insurance, including but not limited to General Liability, Vehicle Liability, and Workers’ Compensation, shall be in accordance with the limits of coverage set forth in the California State University General Liability, Workers’ Compensation, Property, Professional Liability, and Automobile Liability Self-Insurance Program Letter and Certificate of Insurance Coverage, attached hereto and incorporated herein as Attachment ‘B’.

D. CSUEB shall provide professional and personal general liability coverage for students performing services pursuant to this Agreement through the Student Academic Field Experience for Credit Liability Insurance Program (SAFECLIP). The coverage limits under this program are $1,000,000.00 for each Loss and $2,000,000.00 Aggregate for all Covered Parties, and not per student. XXX shall be named as an additional insured under the SAFECLIP Program.
E. The self-insurance and SAFECLIP Program above shall constitute primary insurance as to XXX, its officers, employees, and volunteers, so that any policies held by XXX shall not contribute to any loss under said self-insurance and SAFECLIP Program. Said self-insurance and SAFECLIP Program shall provide for thirty (30) days’ prior written notice to XXX of cancellation or material change.

F. This Agreement shall not take effect until certificate(s) or other sufficient proof that these insurance provisions have been complied with, are filed with and approved by the XXX. If such self-insurance and SAFECLIP Program are not kept in full force and effect at all times during the terms of this Agreement, XXX may elect to treat the failure to maintain the requisite insurance as a breach of this Agreement and terminate the Agreement as provided herein.

15. **LEGAL FEES.** If any party brings a suit or action against the other party arising from any breach of any of the covenants or agreements or any inaccuracies in any of the representations and warranties on the part of the other party arising out of this Agreement, the party shall pay its own costs and expenses of suit, including attorneys’ fees.

16. **DISPUTE RESOLUTION.** Any dispute arising under the terms of this Agreement which is not resolved within a reasonable period of time by the Project Coordinators of XXX and CSUEB shall be brought to the attention of the City Manager, or designee, of the City and the Provost & Vice President of Academic Affairs, or designee, of CSUEB for joint resolution. If resolution of the dispute through these means is pursued without success, either party may seek resolution employing whatever remedies exist in law or equity beyond this Agreement. Despite an unresolved dispute, XXX and CSUEB shall continue without delay to perform its responsibilities under this Agreement. The Parties shall keep accurate records of their services in order to adequately document the extent of their services under this Agreement.

17. **TERMINATION.** If either party wishes to terminate this Agreement due to non-performance or failure to meet expectations, the terminating party will consult with the other party to seek resolution. Notwithstanding the above, this Agreement may be terminated with or without cause by the either party upon 30 days’ prior written notice to the other party. In the event of termination, all finished or unfinished Reports, Data, Methods, Analysis, Recommendations, and other documents prepared by CSUEB, whether paper or electronic, shall immediately be delivered to the City. CSUEB shall be entitled to receive just and equitable compensation for any work satisfactorily completed on such documents and other materials up to the effective date of the Notice of Termination, not to exceed the amounts payable pursuant to this Agreement, and less any damages caused XXX by CSUEB, if any.

18. **LOGOS.** Neither party shall use any identifying logos or marks of the other without the express written permission of the other party.
19. **NOTICES.** All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered; or sent by overnight mail (Federal Express or the like); or sent by registered or certified mail, postage prepaid, return receipt requested; or sent by ordinary mail, postage prepaid; or telegraphed or cabled; or delivered or sent by telex, telecopy, facsimile or fax; and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice, (ii) if sent by overnight mail, the business day following its deposit in such overnight mail facility, (iii) if mailed by registered, certified or ordinary mail, five (5) days (ten (10) days if the address is outside the State of California) after the date of deposit in a post office, mailbox, mail chute, or other like facility regularly maintained by the United States Postal Service, (iv) if given by telegraph or cable, when delivered to the telegraph company with charges prepaid, or (v) if given by telex, telecopy, facsimile or fax, when sent. Any notice, request, demand, direction or other communication delivered or sent as specified above shall be directed to the following persons:

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<th>To XXX:</th>
<th>NAME</th>
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<tr>
<td></td>
<td>TITLE</td>
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<tr>
<td></td>
<td>ADDRESS</td>
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| To CSUEB:  | Robert Todaro       |
|           | Director             |
|           | Procurement Services |
|           | California State University East Bay |
|           | 25800 Carlos Bee Blvd |
|           | SA 2750             |
|           | Hayward, CA 94542   |

Notice of change of address shall be given by written notice in the manner specified in this Section. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent. Any notice, request, demand, direction or other communication sent by cable, telex, telecopy, facsimile or fax must be confirmed within forty-eight (48) hours by letter mailed or delivered as specified in this Section.

20. **CAPACITY AND AUTHORITY.** All individuals signing this Agreement represent and warrant that they have the necessary capacity and authority to act for, sign and bind the respective party on whose behalf they are signing.

21. **MISCELLANEOUS PROVISIONS.**

   A. **Computation of Time Periods.** If any date or time period provided for in this Agreement is or ends on a Saturday, Sunday or federal, state or legal holiday, then such date
shall automatically be extended until 5:00 p.m. Pacific Time of the next day which is not a Saturday, Sunday or federal, state, or legal holiday.

B.  **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument.

C.  **Captions.** Any captions to, or headings of, the sections or subsections of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

D.  **No Obligations to Third Parties.** Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, or obligate any of the parties hereto, to any person or entity other than the parties hereto.

E.  **Exhibits and Schedules.** The Exhibits and Schedules attached hereto are hereby incorporated herein by this reference for all purposes.

F.  **Amendment to this Agreement.** The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

G.  **Waiver.** The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

H.  **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

I.  **Audit.** If this Agreement exceeds ten-thousand dollars ($10,000), the parties shall be subject to the examination and audit of the State Auditor for a period of three (3) years after final payment under the Agreement, per Government Code Section 8546.7.

J.  **Entire Agreement.** This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between the parties as to the subject matter hereof. No subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent or representative of any party hereto shall be of any effect unless it is in writing and executed by the party to be bound thereby.

K.  **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.
L. **Construction.** The parties acknowledge and agree that (i) each party is of equal bargaining strength, (ii) each party has actively participated in the drafting, preparation and negotiation of this Agreement, (iii) each such party has consulted with or has had the opportunity to consult with its own, independent counsel and such other professional advisors as such party has deemed appropriate, relative to any and all matters contemplated under this Agreement, (iv) each party and such party’s counsel and advisors have reviewed this Agreement, (v) each party has agreed to enter into this Agreement following such review and the rendering of such advice, and (vi) any rule or construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement, or any portions hereof, or any amendments hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

XXX

By: ________________________

CALIFORNIA STATE UNIVERSITY EAST BAY

By: ______________________________

Robert Todaro
Director Procurement Services
Procurement & Support Services

APPROVED AS TO FORM:

By: ______________________________

Edward Inch
Provost &
Vice President of Academic Affairs

By: ______________________________

XXXXX

XXXXX

XXXXX

XXXXX
Attachment A

Scope of Services

CSUEB shall ___.

XXX shall ___. 
Attachment B

Self-Insurance Program Letter and Certificate of Insurance Coverage