



**Annual Meeting of the Board of Directors
June 19, 2019 11:00am
NOVA – Sunnyvale Room**

Call to Order	
Approval of Agenda	Action
Approval of Minutes of Meeting of June 14, 2018 (Enclosure)	Action
Annual Election of Directors	Action
Approval of Financial Statement (Enclosure)	Action
Fundraising Update (Enclosure)	Information
Approval of Corporate Authorizing Resolution (Enclosure) to:	Action
• Amend the Articles of Incorporation (Enclosure)	
• Amend the Bylaws (Enclosure)	
• Amend the Conflict of Interest Policy (Enclosure)	
• Approve the Agreement with the City of Sunnyvale (Enclosure)	
Discussion of Fundraising Strategy	Discussion
Agenda / Timing for Next Meeting	Discussion
Adjournment	

NOVA Foundation
Annual Meeting of the Board of Directors

Draft Minutes

June 14, 2018

Present: Carl Cimino, Poncho Guevara, Frank Benest, Laura Stefanski

Not Present: Dennis Cima

Secretary/Treasurer: Kris Stadelman

NOVA Staff: Jeanette Langdell

1. The meeting was called to order at 2:00 pm.
2. It was moved by Ms. Stefanski and carried by voice vote that the Agenda be approved as submitted.
3. It was moved by Mr. Benest and carried by voice vote that the Minutes of the Meeting of June 14, 2017 be approved as submitted.
4. Annual Election of Directors: Mr. Guevara moved to elect Mr. Benest, Mr. Cima, Mr. Cimino, Mr. Guevara, and Ms. Stefanski to the Board of Directors for fiscal year 2018/2019. The motion was carried by voice vote.
5. It was moved by Mr. Benest and carried by voice vote that the Board of Directors approve the Foundation Financial Statement.
6. The Board of Directors received a funding update for the Foundation. The majority of revenue is restricted (LinkedIn, Google.org). It would be ideal to have a regular source of unrestricted funds.
7. Follow-up to Retreat discussion around use of Foundation: There was discussion around social enterprise, but would need to be part of core mission and worth investment of time and effort. Ms. Stadelman brought up the idea of creation of a regional foundation to support workforce development. An organizational structure and participating workforce boards would need to be determined. The Foundation board agreed to support this effort.
8. Ms. Stadelman provided an update on the status of a formal agreement between the Foundation and the City of Sunnyvale. The agreement has not yet been completed. Mr. Benest moved that the Foundation board formally request the City Attorney to complete the agreement. The motion was carried by voice vote.
9. The meeting was adjourned at 2:56 pm.



IRS Tax I.D. 94-3055138

Fiscal Year 2018–2019
July 1, 2018 thru May 4, 2019
Statement of Operations

NOVA Condensed Summary of Net Assets as of May 4, 2019

Current Assets	\$94,590
Liabilities	\$10,500
<hr/>	
Total Net Assets	\$84,090

Condensed Summary of Revenues, Expenses

Revenue / Gifts	\$63,236
Operating Expenses	\$83,859
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Operating Income	- \$20,623

Summary of Foundation Fundraising 7/1/18-5/4/19		
Summary	2018-2019	2017-2018
Beginning Balance	\$ 115,213	\$ 272,399
Contributions this FY	63,236	38,588
Individual	3,160	0
Payroll Deductions/Dept Fundraisers	8,756	6,738
Corporate/Other	51,320	31,850
Total Available	\$178,449	\$310,987
Expenses this FY	83,859	195,774
Google Project	63,754	175,382
LinkedIn Project	10,816	9,862
Client Training / Support Service / Case Mgmt	7,862	9,213
Insurance / Taxes / Fees	1,427	1,318
Other		
Ending Balance	\$ 94,590	\$ 115,213

**NOVAWORKS FOUNDATION
CORPORATE AUTHORIZING RESOLUTION
RE: AMENDED AND RESTATED ARTICLES OF INCORPORATION, BYLAWS, AND
CONFLICT OF INTEREST POLICY, AND AGREEMENT WITH THE CITY OF
SUNNYVALE**

At a duly constituted meeting of the Board of Directors of NOVAworks Foundation, a California nonprofit public benefit corporation (the "Corporation"), held on June ___, 2019, the following resolution was adopted:

WHEREAS, the board of directors of the Corporation (the "Board of Directors") deems it to be in the best interest of the Corporation to amend and restate, in its entirety, the Corporation's articles of incorporation (the "Articles of Incorporation") in the form of the Certificate of Amended and Restated Articles of Incorporation of NOVAworks Foundation, attached hereto as Exhibit A (the "Amended and Restated Articles of Incorporation");

WHEREAS, the Board of Directors deems it to be in the best interest of the Corporation to amend and restate, in its entirety, the Corporation's bylaws (the "Bylaws") in the form of the Amended and Restated Bylaws of NOVAworks Foundation, attached hereto as Exhibit B (the "Amended and Restated Bylaws");

WHEREAS, the Board of Directors deems it to be in the best interest of the Corporation to amend and restate, in its entirety, the Corporation's conflict of interest policy (the "Policy") in the form of the Amended and Restated Conflict of Interest Policy of NOVAworks Foundation, attached hereto as Exhibit C (the "Amended and Restated Policy"); and

WHEREAS, the Board of Directors deems it to be in the best interest of the Corporation for the Corporation to enter into the Cooperation and Administration Agreement, in the form attached hereto as Exhibit D (the "City Agreement") with the City of Sunnyvale, to set forth, among other things, that the City shall act as the Corporation's fiscal agent.

NOW, THEREFORE, BE IT RESOLVED: That the Board of Directors hereby authorizes the Corporation to amend its Articles of Incorporation in the form of the Amended and Restated Articles of Incorporation, attached hereto as Exhibit A;

FURTHER RESOLVED, that the Board of Directors hereby authorizes the Corporation to amend its Bylaws in the form of the Amended and Restated Bylaws, attached hereto as Exhibit B;

FURTHER RESOLVED, that the Board of Directors hereby authorizes the Corporation to amend its Policy in the form of the Amended and Restated Policy, attached hereto as Exhibit C;

FURHTER RESOLVED, that the Board of Directors hereby authorizes the Corporation to enter into the City Agreement, in the form attached hereto as Exhibit D; and

FURTHER RESOLVED: That Poncho Guevara, President of the Corporation, and Kris Stadelman, Secretary of said Corporation, acting together shall be authorized and directed to execute any and all necessary documents, including, but not limited to, the Amended and Restated Articles of Incorporation, the Amended and Restated Bylaws, and the City Agreement and shall take any further actions necessary to amend the Articles of Incorporation of the Corporation, amend the Bylaws of the Corporation, amend the Policy of the Corporation, enter into the City Agreement, and to take all other actions contemplated in this resolution.

CERTIFICATE OF SECRETARY

I, the undersigned, hereby certify that the foregoing is a true copy of the Resolution adopted by unanimous vote of the Board of Directors (the "Board") of NOVAworks Foundation, at a meeting of said Board held on the aforementioned date, and that said Resolution is in full force and effect.

Dated: June ____, 2019

Kris Stadelman, Secretary

EXHIBIT A

AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
NOVAWORKS FOUNDATION

EXHIBIT B
AMENDED AND RESTATED BYLAWS
OF
NOVAWORKS FOUNDATION

EXHIBIT C
AMENDED AND RESTATED POLICY

EXHIBIT D
COOPERATION AND ADMINISTRATION AGREEMENT

CERTIFICATE OF SECOND AMENDED & RESTATED
ARTICLES OF INCORPORATION
OF
NOVAWORKS FOUNDATION
A California Nonprofit Public Benefit Corporation

The undersigned certify that:

1. They are the president and secretary, respectively, of NOVAworks Foundation, a California nonprofit public benefit corporation (the "Corporation").
2. The Articles of Incorporation of the Corporation are amended and restated to read in their entirety as follows:

I. NAME

The name of the corporation is NOVAworks Foundation (the "Corporation").

II. PURPOSE

(a) This Corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the California Nonprofit Public Benefit Corporation Law for charitable purposes. The general purpose of this Corporation is to have and exercise all rights and powers conferred on nonprofit corporations under the laws of California, provided that this Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the primary purposes of this Corporation.

(b) The specific charitable and public purposes for which the Corporation is organized are to benefit and support, in accordance with Section 509(a)(3) of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code"), the City of Sunnyvale, California, a municipal corporation (the "City"), and the purposes of the City by: (1) providing, developing, and implementing employment and job training programs for City residents, and residents within the service area of the NOVA Workforce Board established pursuant to the Workforce Innovation and Opportunity Act (the "Service Area"); (2) developing innovative programs that advance economic sustainability for workers in transition and for new entrants to the labor market; and (3) lessening the burden of the City and other local governments within the Service Area by providing and expanding economic and employment opportunities in the City and the Service Area.

III. AGENT.OF SERVICE

Agent for Service intentionally left blank pursuant to Corporations Code §5819.

IV. DEDICATION AND DISPOSITION •

(a) The property of this Corporation is irrevocably dedicated to charitable purposes and no part of the net income or assets of this Corporation shall ever inure to the benefit of any director, officer, or member of this Corporation or to the benefit of any private individual.

(b) Upon the winding up and dissolution of this Corporation, and after paying or adequately providing for the debts and obligations of the Corporation, the remaining assets shall be distributed to the City, or a nonprofit fund, foundation or corporation that is organized and operated exclusively for charitable purposes, and which has established and maintained its tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, or the corresponding provision of any future Internal Revenue Law.

V. LIMITATION OF CORPORATE ACTIVITIES

(a) This Corporation is organized and operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code. Notwithstanding any other provision of these Articles, the Corporation shall not carry on any activities not permitted to be carried on by: (i) a corporation exempt from federal income tax under Section 501 (c)(3) of the Internal Revenue Code, or the corresponding provision of any future United States Internal Revenue Law; or (ii) by a corporation, contributions to which are deductible under Section 170 of the Internal Revenue Code, or the corresponding provisions of any other United States Internal Revenue Law.

(b) No substantial part of the activities of this Corporation shall consist of lobbying or propaganda, or otherwise -attempting to influence legislation, except as provided in Section 501 (h) of the Internal Revenue Code, and this Corporation shall not participate in or interfere in (including publishing or distributing statements) any political campaign on behalf of any candidate for public office.

VI. DIRECTORS

The number of directors and the manner in which directors shall be chosen and removed from office, their qualifications, powers, duties, term of office, the manner of filling vacancies on the board of directors, and the manner of calling and holding meetings of directors shall be as stated in the bylaws; provided, however, the directors of the Corporation shall, at all times, be appointed by the City or the NOVA Workforce Board.

3. The foregoing amendment and restatement of Articles of Incorporation has been duly approved by the Board of Directors of the Corporation.

4. The Corporation has no members.

5. This Certificate may be executed in counterparts.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge and that this Declaration was executed on _____, 2019, at Sunnyvale, California.

By: Poncho Guevara, President

By: Kris Stadelman, Secretary

**AMENDED AND RESTATED
BYLAWS OF
NOVAWORKS FOUNDATION**

ARTICLE 1. NAME AND OFFICES

SECTION 1. NAME AND PRINCIPAL OFFICE

The name of this corporation is NOVAworks Foundation (the "Corporation"). The principal office of this Corporation for the transaction of its business is located in Santa Clara County, California.

SECTION 2. CHANGE OF ADDRESS

The county of the Corporation's principal office can be changed only by amendment of these Bylaws and not otherwise. The Corporation's board of directors (the "Board of Directors" or the "Board") may, however, change the principal office from one location to another within the named county.

SECTION 3. OTHER OFFICES

The Corporation may also have offices at such other places, within or without the State of California, where it is qualified to do business, as its business may require and as the Board of Directors may, from time to time, designate.

ARTICLE 2. PURPOSES

SECTION 1. OBJECTIVES AND PURPOSES

The primary objectives and purpose of this Corporation shall be to develop innovative programs that advance economic sustainability for workers in transition and for new entrants to the labor market.

ARTICLE 3. MEMBERS

SECTION 1. DETERMINATION OF MEMBERS

The Corporation shall make no provisions for members, however, pursuant to Section 5310(b) of the Nonprofit Public Benefit Corporation Law of the State of California, any action which would otherwise, under law or the provisions of the Articles of Incorporation or Bylaws of this Corporation, require approval by a majority of all members or approval by the members, shall only require the approval of the Board of Directors.

ARTICLE 4. DIRECTORS

SECTION 1. NUMBER

The Corporation shall have a minimum of six (6) Directors. The number may be changed by amendment of this Bylaw, or by repeal of these Bylaws. Except for the Directors then in office upon adoption of these Bylaws, the Directors shall consist of: (i) three (3) current members of the NOVA Workforce Board (collectively referred to as the "NOVA Directors"); and (ii) three (3) individuals appointed by the NOVA Board; provided, however, in the event the NOVA Board no longer exists, then all Directors shall be appointed by the city council (the "City Council") of the City of Sunnyvale (the "City").

SECTION 2. POWERS

Subject to the provisions of the California Nonprofit Public Benefit Corporation Law and any limitations in the Articles of Incorporation, the activities and affairs of this Corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the Board of Directors.

SECTION 3. DUTIES

It shall be the duty of the Directors to:

- (a) Perform any and all duties imposed on them collectively or individually by law, by the Articles of Incorporation of this Corporation, or by these Bylaws.
- (b) Appoint and remove, employ and discharge, and, except as otherwise provided in these Bylaws, prescribe the duties and fix the compensation, if any, of all officers, agents and employees of the Corporation.
- (c) Supervise all officers, agents and employees of the Corporation to assure that their duties are performed properly.
- (d) Meet at such times and places as required by these Bylaws.
- (e) Register their addresses with the Secretary of the Corporation, and notices of meetings mailed or electronically mailed to them at such addresses shall be valid notices thereof.

SECTION 4. TERMS OF OFFICE

Each Director shall hold office until the next annual meeting for election of the Board of Directors as specified in these Bylaws, and until his or her successor is elected and qualifies.

SECTION 5. COMPENSATION

Directors shall serve without compensation.

SECTION 6. RESTRICTION REGARDING INTERESTED DIRECTORS

Notwithstanding any other provision of these Bylaws, not more than forty-nine percent (49%) of the persons serving on the Board may be interested persons. For purposes of this Section, "interested persons" means either:

- (a) Any person currently being compensated by the Corporation for services rendered it within the previous twelve (12) months, whether as a full or part-time office or other employee, independent contractor, or otherwise, excluding any reasonable compensation paid to a Director as Director; or
- (b) Any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of any such person.

SECTION 7. PLACE OF MEETINGS; BROWN ACT

Meetings shall be held at the principal office of the Corporation unless otherwise provided by the Board of at such place within or without the State of California, which has been designated from time to time by resolution of the Board of Directors. Any meeting, regular or special, may be held by conference telephone or similar communications equipment, so long as all Directors participating in such meeting can hear one another. All regular and special meetings of the Board shall, in all respects, conform to provisions of the Ralph M. Brown Act (the "Brown Act"); provided, however, failure to comply with such requirements, in and of itself, shall not modify or invalidate any corporate action. Regular and special meetings of the Board shall be called, noticed and held in accordance with the provisions of section 54956 of the Brown Act; provided, however, failure to comply with such requirements, in and of itself, shall not modify or invalidate any corporate action.

SECTION 8. ANNUAL MEETINGS

The annual meeting of the Directors shall be held in June on such day and at such hour as shall be fixed by the Board of Directors. At the annual meeting, Directors shall be elected by the Board of Directors.

SECTION 9. SPECIAL MEETINGS

Special meetings of the Board of Directors may be called by the President, and Secretary, and such meetings shall be held at the place, within or without the State of California, designated by the persons calling the meetings, and in the absence of such designation, at the principal office of the Corporation.

SECTION 10. NOTICE BY MEETINGS

Regular meetings of the Board may be held without notice. Special meetings of the Board shall be held upon four (4) days' notice by first-class mail or forty-eight (48) hours' notice delivered personally or by telephone or electronic mail. If sent by mail or electronic mail, the notice shall be deemed to be delivered on its deposit in the mails or at the time it is sent via electronic mail. Such notices shall be addressed to each Director at his or her address as shown on the books of the Corporation. Notice of the time and place of holding an adjourned meeting need not be given to absent Directors if the time and place of the adjourned meeting are fixed at the meeting adjourned and if such adjourned meeting is held no more than twenty-four (24) hours from the time of the original meeting. Notice shall be given of any adjourned regular or special meeting to Directors absent from the original meeting if the adjourned meeting is held more than twenty-four (24) hours from the time of the original meeting.

SECTION 11. CONTENTS OF NOTICE

Notice of meetings not herein dispensed with shall specify the place, day and hour of the meeting. The purpose of any Board meeting need not be specified in the notice.

SECTION 12. WAIVER OF NOTICE AND CONSENT TO HOLDING MEETINGS

The transactions of any meeting of the Board, however called and noticed or wherever held, are as valid as though the meeting had been duly held after proper call and notice, provided a quorum, as hereinafter defined, is present and provided that either before or after the meeting each Director not present signs a waiver of notice, a consent to holding the meeting, or an approval of the minutes thereof. All such waivers, consents, or approvals, shall be filed with the corporate records or made a part of the minutes of the meeting.

SECTION 13. QUORUM FOR MEETINGS

A quorum shall consist of two Directors or one-third of the currently serving Directors, whichever is greater.

Except as otherwise provided in these Bylaws or in the Articles of Incorporation of this Corporation, no business shall be considered by the Board at any meeting at which a quorum, as hereinafter defined, is not present, and the only motion which the Chair shall entertain at such meeting is a motion to adjourn from time to time until the time fixed for the next regular meeting of the Board.

When a meeting is adjourned for lack of a quorum, it shall not be necessary to give any notice of the time and place of the adjourned meeting or of the business to be transacted at such meeting, other than by announcement at the meeting at which the adjournment is taken, except as provided in Section 10 of this article.

The Directors present at a duly called and held meeting at which a quorum is initially present may continue to do business notwithstanding the loss of a quorum at the meeting due to a withdrawal of Directors from the meeting, provided that any action thereafter taken must be

approved by the required quorum for such meeting or such greater percentage as may be required by law, or the Articles of Incorporation or Bylaws of this Corporation.

SECTION 14. MAJORITY ACTION AS BOARD ACTION

Every act or decision done or made by a majority of the Directors present at a meeting duly held at which a quorum is present is the act of the Board of Directors, unless the Articles of Incorporation or Bylaws of this Corporation, or provisions of the California Nonprofit Public Benefit Corporation Law, particularly those provisions relating to appointment of committees (Section 5212), approval of contracts or transactions in which a Director has a material financial interest (Section 5233) and indemnification of Directors (Section 5238e), require a greater percentage or different voting rules for approval of a matter by the Board.

SECTION 15. CONDUCT OF MEETINGS

Meeting of the Board of Directors shall be presided over by the Chairman of the Board, or, if no such person has been so designated or, in his or her absence, the President of the Corporation or, in his or her absence, by the Vice-President of the Corporation or, in the absence of each of these persons, by a Chairman chosen by a majority of the Directors present at the meeting. The Secretary of the Corporation shall act as Secretary of all meetings of the Board, provided that in his or her absence, the presiding officer shall appoint another person to act as Secretary of the meeting.

Meetings shall be governed by Roberts' Rules of Order, as such rules may be revised from time to time, insofar as such rules are not inconsistent with or in conflict with these Bylaws, with the Articles of Incorporation of this Corporation, or with provisions of law.

SECTION 16. ACTION BY UNANIMOUS WRITTEN CONSENT WITHOUT MEETING

To the extent such action is not inconsistent with any other law governing the Corporation, any action required or permitted to be taken by the Board of Directors under any provision of law may be taken without a meeting, if all members of the Board shall individually or collectively consent in writing (including electronic mail) to such action. For the purposes of this section only, "all members of the Board" shall not include any "interested Director" as defined in Section 5233 of the California Nonprofit Public Benefit Corporation Law. Such written consent or consents shall be filed with the minutes of the proceedings of the Board. Such action by written consent shall have the same force and effect as the unanimous vote of the Directors. Any certificate or other document filed under any provision of law which relates to action so taken shall state that the action was taken by unanimous written consent of the Board of Directors without a meeting and that the Bylaws of this Corporation authorize the Directors to so act, and such statement shall be prima facie evidence of such authority.

SECTION 17. VACANCIES

Vacancies on the Board of Directors shall exist (1) on the death, resignation or removal of any Director; provided, however, no NOVA Director may be removed by the Directors

without the approval of the NOVA Board, and (2) whenever the number of authorized Directors is increased. In addition, for any of the NOVA Directors, the resignation or removal of each individual from the NOVA Board shall be deemed to be an automatic removal or resignation from the Board (without further action of the applicable NOVA Director or the Directors).

Subject to the limitation on the removal of the NOVA Directors, set forth above, the Board of Directors may declare vacant the office of a Director who has been declared of unsound mind by a final order of court, or convicted of a felony, or been found by a final order of judgment of any court to have breached any duty under Section 5230 and following of the California Nonprofit Public Benefit Corporation Law.

Any Director may resign effective upon giving written notice to the Chairman of the Board, the President, the Secretary or the Board of Directors, unless the notice specifies a later time for the effectiveness of such resignation. No Director may resign if the Corporation would then be left without a duly elected Director or Directors in charge of its affairs, except upon notice to the Attorney General.

Vacancies on the Board shall be filled by the members of the NOVA Board, or in the event the NOVA Board does not exist, then vacancies shall be filled by the City Council.

A person elected to fill a vacancy as provided in this Section shall hold office until the next annual election of the Board of Directors or until his or her death, resignation or removal from office.

SECTION 18. NON-LIABILITY OF DIRECTORS

The Directors shall not be personally liable for the debts, liabilities, or other obligations of the Corporation.

SECTION 19. INDEMNIFICATION BY CORPORATION OF DIRECTORS, OFFICERS, EMPLOYEES AND OTHER AGENTS

To the extent that a person, who is, or was, a Director, officer, employee or other agent of this Corporation has been successful on the merits in defense of any civil, criminal, administrative or investigative proceeding brought to procure a judgment against such person by reason of the fact that he or she is, or was, an agent of the Corporation, or has been successful in defense of any claim, issue or matter, therein, such person shall be indemnified against expenses actually and reasonable incurred by the person in connection with such proceeding.

If such person either settles any such claim or sustains a judgment against him or her, then indemnification against expenses, judgments, fines, settlements and other amounts reasonably incurred in connection with such proceedings shall be provided by this Corporation but only to extent allowed by, and in accordance with the requirements of, Section 5238 of the California Nonprofit Public Benefit Corporation Law.

SECTION 20. INSURANCE FOR CORPORATE AGENTS

The Board of Directors may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of the Corporation (including a Director, officer, employee or other agent of the Corporation) against any liability other than for violation provisions of law relating to self-dealing (Section 5233 of the California Nonprofit Public Benefit Corporation Law) asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not the Corporation would have the power to indemnify the agent against such liability under the provisions of Section 5238 of the California Nonprofit Public Benefit Corporation Law.

ARTICLE 5. OFFICERS

SECTION 1. NUMBER OF OFFICERS

The officers of this Corporation shall be a President, a Secretary, and a chief financial officer who shall be designated the Treasurer. The Corporation may also have, as determined by the Board of Directors, a Chairman of the Board, one or more Vice-Presidents, Assistant Secretaries, Assistant Treasurers, or other officers. Any number of offices may be held by the same person except that neither the Secretary nor the Treasurer may serve as the President or Chairman of the Board.

SECTION 2. QUALIFICATION, ELECTION, AND TERM OF OFFICE

Any person may serve as officer of this Corporation. Officers shall be elected by the Board of Directors, at any time, and each officer shall hold office until he or she resigns or is removed or is otherwise disqualified to serve, or until his or her successor shall be elected and qualified, whichever occurs first.

SECTION 3. SUBORDINATE OFFICERS

The Board of Directors may appoint such other officers or agents as it may deem desirable, and such officers shall serve such terms, have such authority, and perform such duties as may be prescribed from time to time by the Board of Directors.

SECTION 4. REMOVAL AND RESIGNATION

Any officer may be removed, either with or without cause, by the Board of Directors, or by the NOVA Board or the City Council at any time. Any officer may resign at any time by giving written notice to the Board of Directors or to the President or Secretary of the Corporation. Any such resignation shall take effect at the date of the receipt of such notice or at any later date specified therein, and, unless otherwise specified there, the acceptance of such resignation shall not be necessary to make it effective. The above provisions of this Section shall be superseded by any conflicting terms of a contract which has been approved or ratified by the Board of Directors relating to the employment of any officer of the Corporation.

SECTION 5. VACANCIES

Any vacancy caused by the death, resignation, removal, disqualification, or otherwise, of any officer shall be filled by the NOVA Board, or if the NOVA Board does not exist, then by the City Council. In the event of a vacancy in any office other than that of President, such vacancy may be filled temporarily by appointment by the President until such time as the Board shall fill the vacancy. Vacancies occurring in offices of officers appointed at the discretion of the Board may or may not be filled as the Board shall determine, subject to the approval of the NOVA Board, or if the NOVA Board does not exist, then by the City Council.

SECTION 6. DUTIES OF PRESIDENT

The President shall be the chief executive officer of the Corporation and shall, subject to the control of the Board of Directors, supervise and control the affairs of the Corporation and the activities of the officers. He or she shall perform all duties incident to his or her office and such other duties as may be required by law, by the Articles of Incorporation of this Corporation, or by these Bylaws, or which may be prescribed from time to time by the Board of Directors. Unless another person is specifically appointed as Chairman of the Board of Directors, he or she shall preside at all meetings of the Board of Directors. If applicable, the President shall preside at all meetings of the members. Except as otherwise expressly provided by law, by the Articles of Incorporation, or by these Bylaws, he or she shall, in the name of the Corporation, execute such deeds, mortgages, bonds, contracts, checks, or other instruments which may from time to time be authorized by the Board of Directors.

SECTION 7. DUTIES OF VICE-PRESIDENT

In the absence of the President, or in the event of his or her inability or refusal to act, the Vice-President shall perform all the duties of the President, and when so acting shall have all the powers of, and be subject to all the restrictions on, the president. The Vice-President shall have other powers and perform such other duties as may be prescribed by law, by the Articles of Incorporation, or by these Bylaws, or as may be prescribed by the Board of Directors.

SECTION 8. DUTIES OF SECRETARY

The Secretary shall:

Certify and keep at the principal office of the Corporation the original, or a copy, of these Bylaws as amended or otherwise altered to date.

Keep at the principal office of the Corporation or at such other place as the Board may determine, a book of minutes of all meetings of the Directors, and, if applicable, meetings of committees of Directors, recording therein the time and place of holding, whether regular or special, how called, how notice thereof was given, the names of those present or represented at the meeting, and the proceedings thereof.

See that all notices are duly given in accordance with the provisions of these Bylaws or as required by law.

Be custodian of the records and of the seal of the Corporation and see that the seal is affixed to all duly executed documents, the execution of which on behalf of the Corporation under its seal is authorized by law or by these Bylaws.

Exhibit at all reasonable times to any Director of the Corporation, or to his or her agent or attorney, on request therefore, the Bylaws, and the minutes of the proceedings of the Directors of the Corporation.

In general, perform all duties incident to the office of Secretary and such other duties as may be required by law, by the Articles of Incorporation of this Corporation, or by these Bylaws, or which may be assigned to him or her from time to time by the Board of Directors.

SECTION 9. DUTIES OF TREASURER

Subject to the provisions of these Bylaws relating to the "Execution of Instruments, Deposits and Funds," the Treasurer shall:

Have charge and custody of, and be responsible for, all funds and securities of the Corporation, and deposit all such funds in the name of the Corporation in such banks, trust companies, or other depositories as shall be selected by the Board of Directors.

Receive, and give receipt for, monies due and payable to the Corporation from any source whatsoever.

Disburse or cause to be disbursed the funds of the Corporation as may be directed by the Board of Directors, taking proper vouchers for such disbursements.

Keep and maintain adequate and correct accounts of the Corporation's properties and business transactions, including accounts of its assets, liabilities, receipts, disbursements, gains and losses.

Exhibit at all reasonable times the books of account and financial records to any Director of the Corporation, or to his or her agent or attorney, on request therefore.

Render to the President and Directors, whenever requested, an account of any or all of his or her transactions as Treasurer and of the financial condition of the Corporation.

Prepare, or cause to be prepared, and certify, or cause to be certified, the financial statements to be included in any required reports.

In general, perform all duties incident to the office of Treasurer and such other duties as may be required by law, by the Articles of Incorporation of the Corporation, or by these Bylaws, or which may be assigned to him or her from time to time by the Board of Directors.

SECTION 10. COMPENSATION

The salaries of the officers, if any, shall be fixed from time to time by resolution of the Board of Directors, and no officer shall be prevented from receiving such salary by reason of the fact that he or she is also a Director of the Corporation, provided, however, that such compensation paid a Director for serving as an officer of this Corporation shall only be allowed if permitted under the provisions of ARTICLE 4, Section 6, of these Bylaws. In all cases, any salaries received by officers of this Corporation shall be reasonable and given in return for services actually rendered the Corporation which relate to the performance of the charitable or public purposes of this Corporation.

ARTICLE 6. COMMITTEES

SECTION 1. EXECUTIVE COMMITTEE

The Board of Directors may, by a majority vote of Directors then in office, designate two (2) or more of its members (who may also be serving as officers of this Corporation) to constitute an Executive Committee and delegate to such Committee any of the powers and authority of the Board in the management of the business and affairs of the Corporation, except with respect to:

- (a) The approval of any action, which, under law or the provision of these Bylaws, requires the approval of the members or of a majority of all the members.
- (b) The filling of vacancies on the Board or on any committee which has the authority of the Board.
- (c) The fixing of compensation of the Directors for serving on the Board or on any committee.
- (d) The amendment or repeal of Bylaws or the adoption of new Bylaws.
- (e) The amendment or repeal of any resolution of the Board which by its express terms is not so amendable or repealable.
- (f) The appointment of committees of the Board or members, thereof.
- (g) The approval of any transaction to which this Corporation is a party and in which one or more of the Directors has a material financial interest, except as expressly provided in Section 5233(d)93) of the California Nonprofit Public Benefit Corporation Law.

By a majority vote of its members then in office, the Board may at any time revoke or modify any or all of the authority so delegated, increase or decrease but not below two (2) the number of its members, and fill vacancies therein from the members of the Board. The committee shall keep regular minutes of its proceedings, cause them to be filed with the corporate records, and report the same to the Board from time to time as the Board may require.

SECTION 2. OTHER COMMITTEES

The Corporation shall have such other committees as may from time to time be designated by resolution of the Board of Directors. Such other committees may consist of persons who are not also members of the Board. These additional committees shall act in an advisory capacity only to the Board and shall be clearly titled as "advisory" committees.

SECTION 3. MEETINGS AND ACTION OF COMMITTEES

Meetings and action of committees shall be governed by, noticed, held and taken in accordance with the provisions of these Bylaws concerning meetings of the Board of Directors, with such changes in the context of such Bylaw provisions as are necessary to substitute the committee and its members for the Board of Directors and its members, except that the time for regular meetings of committees may be fixed by resolution of the Board of Directors or by the committee. The time for special meetings of committees may also be fixed by the Board of Directors. The Board of Directors may also adopt rules and regulations pertaining to the conduct of meetings of committees to the extent that such rules and regulations are not inconsistent with the provisions of these Bylaws.

ARTICLE 7. EXECUTION OF INSTRUMENTS, DEPOSITS AND FUNDS

SECTION 1. EXECUTION OF INSTRUMENTS

The Board of Directors, except as otherwise provided in these Bylaws, may by resolution authorize any officer or agent of the Corporation to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances. Unless so authorized, no officer, agent, or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable monetarily for any purpose or in any amount.

SECTION 2. CHECKS AND NOTES

Except as otherwise specifically determined by resolution of the Board of Directors, or as otherwise required by law, checks, drafts, promissory notes, orders for the payment of money, and other evidence of indebtedness of the Corporation shall be approved by, or approval delegated by, the Treasurer.

SECTION 3. DEPOSITS

All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies, or other depositories as the Board of Directors may select.

SECTION 4. GIFTS

The Board of Directors may accept on behalf of the Corporation any contribution, gift, bequest, or devise for the charitable or public purposes of this Corporation.

ARTICLE 8. CORPORATE RECORDS, REPORTS AND SEAL

SECTION 1. MAINTENANCE OF CORPORATE RECORDS

The Corporation shall keep at its principal office in the State of California:

- (a) Minutes of all meetings of Directors, and committees of the Board, indicating the time and place of holding such meetings, whether regular or special, how called, the notice given, and the names of those present and the proceedings thereof.
- (b) Adequate and correct books and records of account, including accounts of its properties and business transactions and accounts of its assets, liabilities, receipts, disbursements, gains and losses.
- (c) A copy of the Corporation's Articles of Incorporation and Bylaws as amended to date, which shall be open to inspection by the Directors, if any, of the Corporation at all reasonable times during office hours.

SECTION 2. CORPORATE SEAL

The Board of Directors may adopt, use, and at will alter, a corporate seal. Such seal shall be kept at the principal office of the Corporation. Failure to affix the seal to corporate instruments, however, shall not affect the validity of any such instrument.

SECTION 3. DIRECTORS' INSPECTION RIGHTS

Every Director shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the Corporation.

SECTION 4. RIGHT TO COPY AND MAKE EXTRACTS

Any inspection under the provisions of this Article may be made in person or by agent or attorney and the right to inspection includes the right to copy and make extracts.

SECTION 5. ANNUAL REPORT

The Board shall cause an annual report to be furnished not later than one hundred and twenty (120) days after the close of the Corporation's fiscal year to all Directors of the Corporation, which report shall contain the following information in appropriate detail:

- (a) The assets and liabilities, including the trust funds, of the Corporation as of the end of the fiscal year.

- (b) The principal changes in assets and liabilities, including trust funds, during the fiscal year.
- (c) The revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes, for the fiscal year.
- (d) The expenses or disbursements of the Corporation, for both general and restricted purposes, during the fiscal year.
- (e) Any information required by Section 6 of this Article.

The annual report shall be accompanied by any report thereon of independent accountants, or, if there is no such report, the certificate of an authorized officer of the Corporation that such statements were prepared without audit from the books and records of the Corporation.

SECTION 6. ANNUAL STATEMENT OF SPECIFIC TRANSACTIONS TO MEMBERS

This Corporation shall mail or deliver to all directors a statement within one hundred and twenty (120) days after the close of its fiscal year which briefly describes the amount and circumstances of any indemnification or transaction of the following kind:

- (a) Any transaction in which the Corporation, or its parent or its subsidiary was a party, and in which either of the following had a direct or indirect material financial interest:
 - (1) Any director or officer of the Corporation, or its parent or subsidiary (a mere common directorship shall not be considered a material financial interest); or
 - (2) Any holder of more than ten percent (10%) of the voting power of the Corporation, its parent or its subsidiary.

The above statement need only be provided with respect to a transaction during the previous fiscal year involving more than FIFTY THOUSAND DOLLARS (\$50,000) or which was one of a number of transactions with the same person involving, in the aggregate, more than FIFTY THOUSAND DOLLARS (\$50,000).

Similarly, the statement need only be provided with respect to indemnifications or advances aggregating more than TEN THOUSAND DOLLARS (\$10,000) paid during the previous fiscal year to any Director or officer, except that no such statement need be made if such indemnification was approved by the Directors pursuant to Section 5238(e)(1) of the California Nonprofit Public Benefit Corporation Law.

Any statement required by this Section shall briefly describe the names of the interested persons involved in such transactions, stating each person's relationship to the Corporation, the nature of such person's interest in the transaction and, where practical, the amount of such

interest; provided, that in the case of a transaction with a partnership of which such person is a partner, only the interest of the partnership need be stated.

ARTICLE 9. FISCAL YEAR

SECTION 1. FISCAL YEAR OF THE CORPORATION

The fiscal year of the Corporation shall begin on the first day of July and end on the last day of June in each year.

ARTICLE 10. BYLAWS

SECTION 1. AMENDMENT

Subject to any provision of law applicable to the amendment of Bylaws of public benefit nonprofit corporations, these Bylaws, or any of them, may be altered, amended, or repealed and new Bylaws adopted as by the Board; provided however, any amendment to these Bylaws are subject to the approval by the NOVA Board, or in the event the NOVA Board does not exist, the approval by the City Council, or the City Manager of the City.

ARTICLE 11. AMENDMENT OF ARTICLES

SECTION 1. AMENDMENT OF ARTICLES

Any amendment of the Articles of Incorporation may be adopted by the approval of the Board of Directors; provided however, any amendment to these Bylaws are subject to the approval by the NOVA Board, or in the event the NOVA Board does not exist, the approval by the City Council, or the City Manager of the City.

CERTIFICATE

I, the undersigned, do hereby certify:

- (1) That I am the duly elected and acting Secretary of the Board of Directors (the "Board") of NOVAworksFoundation, a California nonprofit public benefit corporation (the "Corporation");
- (2) That the foregoing Amended and Restated Bylaws, comprising fourteen (14) pages, constitute the Amended and Restated Bylaws of the Corporation as duly ratified by action of the Board at a duly constituted meeting held on _____, 2019; and
- (3) That the foregoing Amended and Restated Bylaws amend and restate all bylaws, as amended, of the Corporation previously adopted by the Board.

IN WITNESS THEREOF, I have hereunto subscribed my name, this _____ day of _____, 2019.

Kris Stadelman, Secretary

**AMENDED AND RESTATED
CONFLICT OF INTEREST POLICY
OF
NOVAWORKS FOUNDATION**

This Amended and Restated Conflict of Interest Policy (the "Policy") was adopted by the board of directors (the "Board" or the "Directors") of NOVAworks Foundation, a California nonprofit public benefit corporation (the "Corporation" or the "Foundation"), on _____, 2019. This Policy amends and restates, in its entirety, any previous conflict of interest policy previously adopted, or otherwise implemented, by the Board. This Policy is intended to provide guidance on how to deal appropriately with situations that involve, or may appear to involve, conflicts of interest, and to comply with federal and state laws concerning conflicts of interest. The basic purpose of the Policy is to avoid both the reality and the perception that Directors have used their positions to derive inappropriate financial, personal or institutional benefits, and it should be interpreted and applied to achieve this purpose.

1. POLICY STATEMENT

In order to assure impartial decision-making, it is the policy of the Corporation that any conflicts of interest or potential conflicts of interest, be fully disclosed before a decision is made on the matter involved, and that no Director participate (other than by providing information) in any decision in which he or she has an actual or potential conflict of interest. The Board will not approve, and the Foundation will not participate in, any self-dealing, or excess benefit transaction, that is prohibited by law. No Director shall participate in the selection, award or administration of a contract supported by federal funds if a real or apparent conflict of interest would be involved. In addition, the Corporation is a supporting organization of the City of Sunnyvale (the "City"), pursuant to Section 509(a)(3) of the Internal Revenue Code of 1986, as amended, and this Policy has been established to avoid both the reality and the perception that the Corporation has been utilized to derive inappropriate financial, personal or institutional benefits for the benefit of the Directors or any third parties from the City.

It is the continuing responsibility of all Directors to review their outside business interests, philanthropic interests, personal interests, and family and other close relationships for actual, apparent, or potential conflicts of interest with respect to the Foundation, and to promptly disclose the nature of the interest or relationship.

2. DEFINITIONS

Affiliated Entity: means an entity other than the Foundation in which a Director or Director's Family Member:

1. has a financial interest, including employment, which, in view of the circumstances, is substantial enough that it would or reasonably could affect a Director's or Family Member's judgment with respect to transactions or arrangements to which the entity is a party); or

2. serves as a director, officer, agent, partner, associate, trustee, or other legal representative.

Conflict of Interest: means a situation in which a person has a duty to more than one person or organization, but cannot do justice to the actual or potentially adverse interests of both parties. This includes when the interests or concerns of a person covered by this policy are inconsistent with the interests of the Foundation. A conflict of interest exists only when the Board decides there is a conflict.

Director: means any one (1) of the Directors.

Family Member: means a Director's spouse, domestic partner, child, parent, legal guardian or ward, sibling, grandparent or grandchild, as well as those persons' spouses or domestic partners.

Interested Party: means a Director, a Director's Family Member or an Affiliated Entity.

3. IMPLEMENTATION OF THE CONFLICT OF INTEREST POLICY

A. Circumstances that Could be Deemed a Conflict of Interest.

The following transactions or arrangements, whether currently existing or pending, could be deemed a conflict of interest under Section 3C:

1. An agreement or relationship between the Foundation and an Interested Party involving the:

- (a) sale, lease or purchase of real property, goods or services;
- (b) provision or receipt of a loan or grant; or
- (c) establishment of any other type of pecuniary relationship.

Gifts to the Foundation do not create a conflict of interest under this section; provided, however, the Board shall not accept any gift or anything of value from any person that is seeking, or intends to seek within twelve (12) months after acceptance by the Corporation, any authorization, permit, or other discretionary approval from the City unless the Board has determined that such acceptance will not create a Conflict of Interest.

2. An Interested Party competing with the Foundation in rendering services.

3. An Interested Party competing with the Foundation in an agreement or relationship with a third party involving the:

- (a) sale, lease or purchase of real property, goods or services;
- (b) provision or receipt of a loan or grant; or

- (c) establishment of any other type of pecuniary relationship.

Gifts to the Foundation do not create a conflict of interest under this section; provided, however, the Board shall not accept any gift or anything of value from any person that is seeking, or intends to seek within twelve (12) months after acceptance by the Corporation, any authorization, permit, or other discretionary approval from the City unless the Board has determined that such acceptance will not create a Conflict of Interest.

4. A Director obtaining a non-financial benefit or advantage that he/she would not have obtained absent his/her relationship with the Foundation such as:

- (a) seeking to make use of confidential information obtained from the Foundation for his/her own benefit or for the benefit of another Interested Party;

- (b) seeking to take advantage of an opportunity or enabling another Interested Party to take advantage of an opportunity that he/she has reason to believe would be of interest to the Foundation; or

- (c) influencing the Foundation to adopt a policy that provides a significant non-financial benefit to an Interested Party.

5. An Interested Party accepting gifts, entertainment or other favors from any individual or entity:

- (a) that does or is seeking to do business with the Foundation; or

- (b) that has received, is receiving or is seeking to receive a contract, subcontract, grant, or to secure other financial commitments from the Foundation; or

- (c) under circumstances where it might be inferred that such action was intended to influence or possibly would influence the Director in the performance of his or her duties.

Subject to any applicable law that may otherwise apply to a Director, including, but not limited to any state law or City requirement, it is permissible to accept gifts of nominal value, meals, and social invitations that are in keeping with good business ethics and do not obligate the recipient to take or refrain from taking any action or decision on behalf of the Foundation.

B. Duty to Disclose.

Any Director with a potential or actual Conflict of Interest ("Interested Director") must disclose to the President of the Foundation, or the Chair of the Board, the existence of the interest in writing even if it concerns a matter that is not the subject of Board action.

C. Determining if a Conflict of Interest Exists and Whether it is to be Waived.

1. Processes that apply in all situations, including self-dealing transactions:

(a) The Board has authority to determine whether a Conflict of Interest exists, whether a Conflict of Interest is to be waived and whether a self-dealing transaction is to be ratified.

(b) Should the Board in the future establish committees pursuant to the Corporation's bylaws (the "Committees"), then the Committees of the Board do not have authority to decide, but may make recommendations on those issues to the Board. Committees shall follow this policy in coming to their recommendations.

(c) Prior to Board action on a matter involving a potential or actual Conflict of Interest, the Interested Director shall disclose all facts material to the matter. (If the Interested Director is not able to be present at the Board meeting, s/he shall disclose to the President of the Foundation, or the Chair of the Board, or his/her designee all facts material to the matter, and the President or the Chair of the Board shall report the disclosure at the meeting.

(d) Interested Directors shall not participate in or be permitted to hear the Board's discussion of the matter except to disclose material facts and to respond to questions. Interested Directors will not attempt to exert personal influence with respect to the matter either at or outside the meeting.

(e) After disclosure of the interest and all material facts, and any discussion with the Interested Director, and with the Interested Director absent, the remaining disinterested Directors shall decide by a majority vote of whether the matter at issue presents a Conflict of Interest, and if it so, whether the conflict should be waived because the transaction or arrangement is lawful, compliant with the Foundation's bylaws and not adverse to the Foundation's best interests.

(f) In waiving a Conflict of Interest, the Foundation may request the affected Director to provide it with certain assurances or waivers.

(g) Interested Directors may be counted in determining the presence of a quorum at a meeting of the Board considering the existence and waiver of a Conflict of Interest.

2. Additional processes that apply to self-dealing transactions:

(a) The President of the Foundation, or the Chair of the Board, may appoint, if appropriate, a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.

(b) After exercising due diligence, the Board shall determine whether the Foundation can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.

(c) If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the Board shall determine by a majority vote of the disinterested Directors whether the transaction or arrangement is in the Foundation's best interest, for its own benefit, and whether it is fair and

reasonable. In conformity with the above determination the Board shall make its decision as to whether to enter into the transaction or arrangement.

D. Violations of the Conflict of Interest Policy.

1. If the Board has reasonable cause to believe a Director has failed to disclose actual or possible conflicts of interest, it shall inform the Director of the basis for such belief and afford the Director an opportunity to explain the alleged failure to disclose.

2. If, after hearing the Director's response and after making further investigation as warranted by the circumstances, the Board determines the Director has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action including removal from the Board.

E. Records of Proceedings.

The minutes of the Board (and, if established in the future, all Committees) shall contain:

1. The names of the persons who disclosed or otherwise were found to have an interest in connection with an actual or possible conflict of interest, the nature of the interest, any action taken to determine whether a conflict of interest was present, any Committee's recommendation and the Board' decision as to whether a conflict of interest in fact existed and should be waived.

2. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

F. Compensation.

1. A Director who receives compensation, directly or indirectly, from the Foundation for services is precluded from voting on matters pertaining to that Director's compensation;

2. A member of any Committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Foundation for services is precluded from voting on matters pertaining to that member's compensation.

G. Annual Statements.

Each Director, principal officer and Committee member shall annually disclose relationships that could give rise to a conflict of interest and shall sign a statement which affirms such person:

1. has received a copy of this Policy;
2. has read and understands the Policy;
3. has agreed to comply with the Policy;

4. understands the Foundation is a charitable organization which, in order to maintain its federal tax exemption, must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

A form of such annual disclosure statement is attached to this Policy as Exhibit A.

A. Conflict.

Nothing in this Policy shall be deemed to permit any Director to violate any applicable law, or any provision of the Corporation's bylaws. In the event of any conflict between any applicable law or the Corporation's bylaws and this Policy, then Director shall comply with the requirements of the applicable law or the Corporation's bylaws.

EXHIBIT A

FORM OF NOVAWORKS FOUNDATION
ANNUAL CONFLICT OF INTEREST DISCLOSURE FORM AND STATEMENT

In the space below, please list any relationships you or a family member have that might present a conflict of interest. (Please include any relationships that are current, that existed in the past 12 months or that are pending.)

Identity of Individual or Entity	Description of Relationship
<i>Example:</i> XYZ, Inc.	<i>Example:</i> I am an employee of XYZ; last year XYZ did \$500 of business with the Foundation.

1. I am a member of the Board of NOVAworks Foundation (the "Foundation"). I have read and understand the Foundation's Conflict of Interest Policy ("Policy"), a copy of which is attached hereto. I agree to comply with its terms.

2. I understand the Foundation is a charitable organization, tax exempt under Section 501(c)(3) of the U.S. Internal Revenue Code, and that in order to maintain its tax-exempt status the Foundation must engage primarily in activities that accomplish one or more of its tax-exempt purposes.

3. To the best of my knowledge, my relationships present no Conflict of Interest within the meaning of the Policy. If I become aware of any such actual or potential Conflict of Interest, I will promptly report it to the President of the Foundation, or the Chair of the Board, in writing. I further agree to report any such actual or potential conflict of interest involving any Interested Party known to me. I agree to the foregoing provisions of this paragraph during the period of time I am a member of the Board or a committee of the Foundation.

4. I have not disclosed, and will not disclose, to any person not a member of the Board or a committee of the Foundation any confidential or other proprietary information of the Foundation, or use any such information for other than the sole benefit of the Foundation, except where such disclosure is in the course of efforts reasonably intended to facilitate achieving a proper the Foundation objective or goal. I agree to the foregoing provisions of this paragraph during the period of time I am a Director or serve on a committee of the Foundation, as well as after I cease to be such a member.

Dated: _____

Signature: _____

Print Name: _____

COOPERATION AND ADMINISTRATION AGREEMENT
(NOVAWORKS FOUNDATION)

This Cooperation and Administration Agreement (the "Agreement") is dated for reference purposes on _____, 2019, by and between the City of Sunnyvale, a municipal corporation (the "City"), and NOVAworks Foundation, a California nonprofit public benefit corporation (the "Foundation").

RECITALS

A. The Foundation is a California nonprofit public benefit corporation, exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), whose charitable purpose is to provide job training and related activities. The Foundation is a supporting organization of the City, in accordance with Section 509(a)(3) of the Code, and the Foundation's charitable purpose furthers the public purposes of the City.

B. The City and the Foundation desire to enter into this Agreement to set forth: (i) the parties' desire to efficiently and effectively cooperate in furtherance of the charitable purposes of the Foundation, and the public purposes of the City, of increasing and improving job training programs and opportunities within the service area of the NOVA Workforce Board established pursuant to the Workforce Innovation and Opportunity Act (the "Service Area"); and (ii) the relationship between the parties regarding certain administrative assistance and other services provided by the City to the Foundation.

NOW, THEREFORE, in consideration of the covenants and promises contained herein, the City and the Foundation (each a "Party", and, collectively, the "Parties") agree as follows:

ARTICLE 1
PURPOSE

Section 1.1 Purpose.

The purpose of this Agreement is to set forth the relationship and the respective rights, duties, and obligations of the Parties regarding the administrative and other assistance provided by the City to the Foundation. The Parties desire to establish procedures to effectively and efficiently administer the charitable assets of the Foundation.

Section 1.2 Annual Payment.

In consideration for the City's performance of its obligations pursuant to this Agreement, the Foundation shall make an annual payment to the City in the amount of One Dollar (\$1.00) no later than January 31 during each year this Agreement is in effect (or such other date mutually determined by the Parties).

Section 1.3 Effective Date. The Effective Date of this Agreement shall be July 1, 2019.

ARTICLE 2
CITY OBLIGATIONS

Section 2.1 Administrative Services.

The City shall provide adequate clerical services and administrative assistance, as reasonably determined by the City, for the benefit of the Foundation.

Section 2.2 Accounting Services.

For the benefit of the Foundation, the City shall provide the necessary accounting and fiscal implementation services of the Foundation's assets, including, but not limited to: (i) establishing and maintaining one, or more, separate account(s) for the Foundation's cash assets at such federally-insured financial institution(s) reasonably determined by the City (collectively, the "Foundation Account"); (ii) depositing the Foundation's cash assets into such Foundation Account; (iii) making disbursements solely from the Foundation Account, on behalf of the Foundation, necessary to satisfy the Foundation's debts and obligations; (iv) preparing the Foundation's IRS Form 990, or any equivalent informational return required to be filed by the Foundation pursuant to the Code, or any other applicable law; and (v) otherwise implementing the financial accounting and records of the Foundation, as mutually determined by the Parties. Notwithstanding the foregoing, nothing in this Agreement imposes any liability on the City for any debts, liabilities, or any obligations of the Foundation, and all such debts, liabilities, or any other obligation of the Foundation shall be satisfied solely by the proceeds of the Foundation Account or such other assets of the Foundation (if any). In the event of any conflict between the preceding sentence and any other provision of this Agreement, the terms of the preceding sentence shall, in all events, control.

Section 2.3 Procurement Services. The City and the Foundation shall create a mutually agreeable procurement procedure to facilitate an efficient and equitable process that adheres to any applicable legal or grant requirements.

ARTICLE 3
FOUNDATION OBLIGATIONS

Section 3.1 Appointment of City as Agent. As of the Effective Date, the Foundation hereby irrevocably appoints the City as the Foundation's agent during the term of this Agreement. As the Foundation's agent, the City is hereby authorized to execute any and all documents, accept cash or other assets, and otherwise take such other actions, on behalf of the Foundation, as necessary to implement the administrative and fiscal services set forth in this Agreement.

Section 3.2 Reimbursement of City Costs. As additional consideration for the City's performance of its duties and obligations set forth herein, the Foundation shall reimburse the City for the costs and expenses incurred by the City on behalf of the Foundation, including, but not limited, to the reimbursement to the City for any City employee, or third-party costs incurred by the City to the extent necessary for the performance of activities for the benefit of the

Foundation. Such reimbursement shall be made on an annual basis, or at such other times mutually determined by the Parties.

Section 3.3 Indemnification. As additional consideration for the City's performance of its duties and obligations set forth herein, the Foundation agrees to indemnify, defend (with counsel reasonably acceptable to the City) and hold the City, its council members, officers, employees, agents and representatives, harmless from any and all claims, causes of action, injuries or damages arising out of this Agreement. This indemnity shall include, but shall not be limited to, the payment to the City of any reasonable costs, including attorneys' fees, incurred in defending any action filed against the City, its officers, employees, agents and representatives covered by this Agreement. This obligation shall survive the termination or expiration of this Agreement.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE FOUNDATION

Section 4.1 General Representations and Warranties of the Foundation.

The Foundation represents and warrants as follows:

(a) The Foundation is a duly organized, validly existing, California nonprofit public benefit corporation, is in good standing and is qualified to do business under the laws of the State of California, with full power to conduct its business, and undertake the obligations of the Foundation set forth in this Agreement.

(b) The Foundation is exempt from federal income taxation pursuant to Section 501(c)(3) of the Code.

(c) All actions and approvals legally required to be taken by the Foundation in connection with authorization and execution of this Agreement and the consummation of the transactions contemplated by and related to this Agreement have been taken or obtained.

(d) This Agreement has been duly authorized, executed and delivered by the Foundation and, when executed and delivered by the Foundation, will constitute the legal, valid and binding obligation of the Foundation, enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization or other laws or equitable principles limiting creditors' rights generally.

Section 4.2 Continuing Obligation of Representations and Warranties.

Upon discovery by the Foundation of a breach of any of such representations, warranties and covenants which materially and adversely affects the City, the Foundation shall give prompt written notice to the City.

ARTICLE 5 DEFAULT AND REMEDIES

Section 5.1 Events of Default by the Foundation.

Upon the occurrence of any one or more of the following events, the City shall have the remedies specified in Section 5.3 of this Agreement:

(a) Failure by the Foundation to observe or perform in any material respect any covenant, condition or agreement in this Agreement or any other agreement between the City and the Foundation (or any entity controlled by the Foundation) to be observed or performed by the Foundation for a period of thirty (30) days (or such shorter time-frame set forth in the applicable agreement between the Parties) after written notice, specifying such failure and requesting that it be corrected, is given to the Foundation by the City;

(b) Entry of a decree or order of a court, agency, or supervisory authority having jurisdiction for the appointment of a conservator or receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings, or for the winding up or liquidation of its affairs, against the Foundation and such decree or order shall have remained in force, undischarged or unstayed for a period of ninety (90) days;

(c) Consent by the Foundation to the appointment of a conservator or receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings or relating to the Foundation or of or relating to all or substantially all of the Foundation's property;

(d) An admission by the Foundation in writing of the Foundation's inability to pay its debts generally as they become due, or the filing of a petition to take advantage of any applicable insolvency or reorganization statute, or the making of an assignment for the benefit of the Foundation's creditors or voluntarily suspending payment of the Foundation's obligations; or

(e) The discovery by the City that any representation of, or warranty by, the Foundation to the City was false in any material respect when made, or at any time it was warranted to be true pursuant to the terms of this Agreement.

Section 5.2 Events of Default by City.

Upon the occurrence of any one or more of the following events, the Foundation shall have the remedies specified in Section 5.4 of this Agreement:

(a) Failure by the City to observe or perform in any material respect any covenant, condition or agreement in this Agreement to be observed or performed by the City for a period of thirty (30) days after written notice, specifying such failure and requesting that it be corrected, is given to the City by the Foundation; provided, however, if the failure stated in the notice cannot be remedied within such thirty (30) day period, failure by the City to commence to cure within thirty (30) days and to diligently pursue and complete the cure thereafter;

(b) Entry of a decree or order of a court, City, or supervisory authority having jurisdiction for the appointment of a conservator or receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings, or for the

winding up or liquidation of its affairs, against the City and such decree or order shall have remained in force, undischarged or unstayed for a period of ninety (90) days;

(c) Consent by the City to the appointment of a conservator or receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings or relating to the City or of or relating to all or substantially all of the City's property; or

(d) An admission by the City in writing of the City's inability to pay its debts generally as they become due, or the filing of a petition to take advantage of any applicable insolvency or reorganization statute, or the making of an assignment for the benefit of the City's creditors or voluntarily suspending payment of the City's obligations.

Section 5.3 Remedies for the Foundation Default.

Whenever any event referred to in Section 5.1 of this Agreement shall occur and be continuing, the City may take any one or more of the following remedial steps:

(a) Terminate this Agreement by notice in writing to the Foundation.

(b) The City may take whatever other action at law or in equity necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of the Foundation under this Agreement.

Section 5.4 Remedies for City Default.

Whenever any event referred to in Section 5.2 of this Agreement shall occur and be continuing, the Foundation may terminate this Agreement, but shall have no right to any other remedies available at law or at equity. The Foundation hereby waives any right to pursue any other remedy, and shall be estopped from taking or otherwise pursuing any other remedy.

Section 5.5 Non-Exclusive Remedies.

Unless otherwise expressly provided, no remedy conferred or reserved is intended to be exclusive of any other available remedy, but each remedy shall be cumulative and shall be in addition to other remedies given under this Agreement or existing at law or in equity. No delay or omission to exercise any right or power accruing under this Agreement shall impair any such right or power or shall be construed to be a waiver of such right or power, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle a Party to exercise any remedy reserved to it under this Agreement, it shall not be necessary to give any notice, other than such notice as may be required under this Agreement.

ARTICLE 6 MISCELLANEOUS PROVISIONS

Section 6.1 Cooperation Between the Parties. The Parties shall cooperate, and use good faith, commercially reasonable, efforts to cause the performance of each Party's respective

rights, duties, and obligations set forth in this Agreement to efficiently and effectively further the charitable purposes of the Foundation, and the public purposes of the City, of increasing and improving job training programs and opportunities within the Service Area. To the extent applicable, the Parties shall execute such additional documents, and take such other actions (at no cost to the City) as may be reasonably necessary to implement the goals and objectives of this Agreement, including, but not limited to, executing such additional documents required to establish or otherwise maintain the Foundation Account.

Section 6.2 Notices.

Any notices, requests, demands, payments or other communications under this Agreement shall be in writing and shall be deemed to be duly given if delivered by United States mail, certified, with return receipt requested, or express delivery with a delivery receipt. Such notice shall be effective on the date shown on the delivery receipt as of the date of delivery, the date delivery was refused, or the date the notice was returned as undeliverable. Notices shall be addressed as follows:

If to the Foundation:

NOVAworks Foundation
505 W. Olive Ave.
Sunnyvale, CA 94086
Attn: President

If to the City:

City of Sunnyvale
456 W. Olive Ave.
Sunnyvale, CA 94086
Attn.: City Manager

or such other address or addresses as may be furnished in writing to the other Party pursuant to the procedures set forth in this Section.

Section 6.3 Authorized Representatives of City and the Foundation.

(a) The City Manager of the City is designated to be the authorized representative of the City for purposes of this Agreement. Whenever this Agreement provides for consent of the City, the written consent of the City Manager, or his or her designee, shall be deemed to be the consent of the City. Whenever this Agreement provides for any action of the City to be taken, such action shall be taken by the City Manager, or his or her designee.

(b) The Foundation designates the President of the Foundation to be the authorized representative of the Foundation for purposes of this Agreement. Whenever this

Agreement provides for consent of the Foundation, the written consent of the President of the Foundation shall be deemed to be the consent of the Foundation.

Section 6.4 Compliance with Law.

The Foundation agrees to comply with all applicable state and federal laws and regulations in the performance of its obligations under this Agreement.

Section 6.5 Timely Performance.

Time is of the essence of this Agreement.

Section 6.6 Assignment of Rights or Duties Under this Agreement.

The Foundation may not assign or delegate any of its rights, duties or obligations under this Agreement without the prior written approval of the City.

Section 6.7 Amendments.

No amendment to this Agreement shall be effective unless it is reduced to writing and signed by the Parties.

Section 6.8 Waiver.

No waiver of any term or provision of this Agreement shall be effective unless made in writing and signed by each of the Parties. Any written waiver shall be effective only in the instance given and then only with respect to the specific term or provision (or portion of a term or provision) of this Agreement to which it expressly relates and shall not be deemed or construed to constitute a waiver of any other term or provision (or portion of a term or provision) in any other instance.

Section 6.9 Binding on Successors.

This Agreement inures to the benefit of, and is binding upon, the City and the Foundation and their respective agents, representatives, successors, and assigns; provided, however, the Foundation may only assign this Agreement as set forth in Section 6.6.

Section 6.10 Captions.

The captions heading the various sections and subsections of this Agreement are for convenience only and do not in any way expand or limit the provisions of this Agreement.

Section 6.11 Construction of Terms.

Any reference to either the singular or plural shall be deemed to include the other wherever it is necessary for the interpretation of this Agreement.

Section 6.12 Governing Law.

This Agreement shall be interpreted under California law.

Section 6.13 Integration.

This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written.

Section 6.14 No Third-Party Beneficiary.

Nothing in this Agreement shall be construed to make any of the Parties hereto liable for any of the debts or other obligations of any other Party hereto, and the Parties hereto specifically acknowledge, agree and declare that no person is intended to be a third-party beneficiary of this Agreement.

Section 6.15 Term.

This Agreement shall be effective as of the Effective Date and shall continue in effect until the earlier of: (i) this Agreement is terminated pursuant to Section 5.3 or Section 5.4; or (ii) either Party terminates this Agreement by providing written notice to the other Party at least thirty (30) days prior to the date of such termination.

Section 6.16 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

Remainder of Page Left Intentionally Blank

The City and the Foundation have executed this Agreement as of the Effective Date.

CITY:

CITY OF SUNNYVALE, a municipal corporation

Kent Steffens, City Manager

APPROVED AS TO FORM:

John A. Nagel, City Attorney

THE FOUNDATION:

NOVAWORKS FOUNDATION, a California
nonprofit public benefit corporation

By: _____
Poncho Guevara, President

**NOVAWORKS FOUNDATION
CORPORATE AUTHORIZING RESOLUTION
RE: AMENDED AND RESTATED ARTICLES OF INCORPORATION, BYLAWS, AND
CONFLICT OF INTEREST POLICY, AND AGREEMENT WITH THE CITY OF
SUNNYVALE**

At a duly constituted meeting of the Board of Directors of Novaworks Foundation, a California nonprofit public benefit corporation (the "Corporation"), held on June ___, 2019, the following resolution was adopted:

WHEREAS, the board of directors of the Corporation (the "Board of Directors") deems it to be in the best interest of the Corporation to amend and restate, in its entirety, the Corporation's articles of incorporation (the "Articles of Incorporation") in the form of the Certificate of Amended and Restated Articles of Incorporation of Novaworks Foundation, attached hereto as Exhibit A (the "Amended and Restated Articles of Incorporation");

WHEREAS, the Board of Directors deems it to be in the best interest of the Corporation to amend and restate, in its entirety, the Corporation's bylaws (the "Bylaws") in the form of the Amended and Restated Bylaws of Novaworks Foundation, attached hereto as Exhibit B (the "Amended and Restated Bylaws");

WHEREAS, the Board of Directors deems it to be in the best interest of the Corporation to amend and restate, in its entirety, the Corporation's conflict of interest policy (the "Policy") in the form of the Amended and Restated Conflict of Interest Policy of Novaworks Foundation, attached hereto as Exhibit C (the "Amended and Restated Policy"); and

WHEREAS, the Board of Directors deems it to be in the best interest of the Corporation for the Corporation to enter into the Cooperation and Administration Agreement, in the form attached hereto as Exhibit D (the "City Agreement") with the City of Sunnyvale, to set forth, among other things, that the City shall act as the Corporation's fiscal agent.

NOW, THEREFORE, BE IT RESOLVED: That the Board of Directors hereby authorizes the Corporation to amend its Articles of Incorporation in the form of the Amended and Restated Articles of Incorporation, attached hereto as Exhibit A;

FURTHER RESOLVED, that the Board of Directors hereby authorizes the Corporation to amend its Bylaws in the form of the Amended and Restated Bylaws, attached hereto as Exhibit B;

FURTHER RESOLVED, that the Board of Directors hereby authorizes the Corporation to amend its Policy in the form of the Amended and Restated Policy, attached hereto as Exhibit C;

FURHTER RESOLVED, that the Board of Directors hereby authorizes the Corporation to enter into the City Agreement, in the form attached hereto as Exhibit D; and

FURTHER RESOLVED: That _____, President of the Corporation, and _____, Secretary of said Corporation, acting together shall be authorized and directed to execute any and all necessary documents, including, but not limited to, the Amended and Restated Articles of Incorporation, the Amended and Restated Bylaws, and the City Agreement and shall take any further actions necessary to amend the Articles of Incorporation of the Corporation, amend the Bylaws of the Corporation, amend the Policy of the Corporation, enter into the City Agreement, and to take all other actions contemplated in this resolution.

CERTIFICATE OF SECRETARY

I, the undersigned, hereby certify that the foregoing is a true copy of the Resolution adopted by unanimous vote of the Board of Directors (the "Board") of Novaworks Foundation, at a meeting of said Board held on the aforementioned date, and that said Resolution is in full force and effect.

Dated: June __, 2019

_____, Secretary

EXHIBIT A
AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
NOVAWORKS FOUNDATION

EXHIBIT B
AMENDED AND RESTATED BYLAWS
OF
NOVAWORKS FOUNDATION

EXHIBIT C
AMENDED AND RESTATED POLICY

EXHIBIT D
FORM OF CITY AGREEMENT

COOPERATION AND ADMINISTRATION AGREEMENT
(NOVAWORKS FOUNDATION)

This Cooperation and Administration Agreement (the "Agreement") is dated for reference purposes on _____, 2019, by and between the City of Sunnyvale, a municipal corporation (the "City"), and NOVAworks Foundation, a California nonprofit public benefit corporation (the "Foundation").

RECITALS

A. The Foundation is a California nonprofit public benefit corporation, exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), whose charitable purpose is to provide job training and related activities. The Foundation is a supporting organization of the City, in accordance with Section 509(a)(3) of the Code, and the Foundation's charitable purpose furthers the public purposes of the City.

B. The City and the Foundation desire to enter into this Agreement to set forth: (i) the parties' desire to efficiently and effectively cooperate in furtherance of the charitable purposes of the Foundation, and the public purposes of the City, of increasing and improving job training programs and opportunities within the service area of the NOVA Workforce Board established pursuant to the Workforce Innovation and Opportunity Act (the "Service Area"); and (ii) the relationship between the parties regarding certain administrative assistance and other services provided by the City to the Foundation.

NOW, THEREFORE, in consideration of the covenants and promises contained herein, the City and the Foundation (each a "Party", and, collectively, the "Parties") agree as follows:

ARTICLE 1
PURPOSE

Section 1.1 Purpose. The purpose of this Agreement is to set forth the relationship and the respective rights, duties, and obligations of the Parties regarding the administrative and other assistance provided by the City to the Foundation. The Parties desire to establish procedures to effectively and efficiently administer the charitable assets of the Foundation.

Section 1.2 Annual Payment. In consideration for the City's performance of its obligations pursuant to this Agreement, the Foundation shall make an annual payment to the City in the amount of One Dollar (\$1.00) no later than January 31 during each year this Agreement is in effect (or such other date mutually determined by the Parties).

Section 1.3 Effective Date. The Effective Date of this Agreement shall be July 1, 2019.

ARTICLE 2
CITY OBLIGATIONS

Section 2.1 Administrative Services. The City shall provide adequate clerical services and administrative assistance, as reasonably determined by the City, for the benefit of the Foundation.

Section 2.2 Accounting Services. For the benefit of the Foundation, the City shall provide the necessary accounting and fiscal implementation services of the Foundation's assets, including, but not limited to: (i) establishing and maintaining one, or more, separate account(s) for the Foundation's cash assets at such federally-insured financial institution(s) reasonably determined by the City (collectively, the "Foundation Account"); (ii) depositing the Foundation's cash assets into such Foundation Account; (iii) making disbursements solely from the Foundation Account, on behalf of the Foundation, necessary to satisfy the Foundation's debts and obligations; (iv) preparing the Foundation's IRS Form 990, or any equivalent informational return required to be filed by the Foundation pursuant to the Code, or any other applicable law; and (v) otherwise implementing the financial accounting and records of the Foundation, as mutually determined by the Parties. Notwithstanding the foregoing, nothing in this Agreement imposes any liability on the City for any debts, liabilities, or any obligations of the Foundation, and all such debts, liabilities, or any other obligation of the Foundation shall be satisfied solely by the proceeds of the Foundation Account or such other assets of the Foundation (if any). In the event of any conflict between the preceding sentence and any other provision of this Agreement, the terms of the preceding sentence shall, in all events, control.

Section 2.3 Procurement Services. The City and the Foundation shall create a mutually agreeable procurement procedure to facilitate an efficient and equitable process that adheres to any applicable legal or grant requirements.

ARTICLE 3
FOUNDATION OBLIGATIONS

Section 3.1 Appointment of City as Agent. As of the Effective Date, the Foundation hereby irrevocably appoints the City as the Foundation's agent during the term of this Agreement. As the Foundation's agent, the City is hereby authorized to execute any and all documents, accept cash or other assets, and otherwise take such other actions, on behalf of the Foundation, as necessary to implement the administrative and fiscal services set forth in this Agreement.

Section 3.2 Reimbursement of City Costs. As additional consideration for the City's performance of its duties and obligations set forth herein, the Foundation shall reimburse the City for the costs and expenses incurred by the City on behalf of the Foundation, including, but not limited, to the reimbursement to the City for any City employee, or third-party costs incurred by the City to the extent necessary for the performance of activities for the benefit of the Foundation. Such reimbursement shall be made on an annual basis, or at such other times mutually determined by the Parties.

Section 3.3 Indemnification. As additional consideration for the City's performance of its duties and obligations set forth herein, the Foundation agrees to indemnify, defend (with counsel reasonably acceptable to the City) and hold the City, its council members, officers, employees, agents and representatives, harmless from any and all claims, causes of action, injuries or damages arising out of this Agreement. This indemnity shall include, but shall not be limited to, the payment to the City of any reasonable costs, including attorneys' fees, incurred in defending any action filed against the City, its officers, employees, agents and representatives covered by this Agreement. This obligation shall survive the termination or expiration of this Agreement.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE FOUNDATION

Section 4.1 General Representations and Warranties of the Foundation. The Foundation represents and warrants as follows:

(a) The Foundation is a duly organized, validly existing, California nonprofit public benefit corporation, is in good standing and is qualified to do business under the laws of the State of California, with full power to conduct its business, and undertake the obligations of the Foundation set forth in this Agreement.

(b) The Foundation is exempt from federal income taxation pursuant to Section 501(c)(3) of the Code.

(c) All actions and approvals legally required to be taken by the Foundation in connection with authorization and execution of this Agreement and the consummation of the transactions contemplated by and related to this Agreement have been taken or obtained.

(d) This Agreement has been duly authorized, executed and delivered by the Foundation and, when executed and delivered by the Foundation, will constitute the legal, valid and binding obligation of the Foundation, enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization or other laws or equitable principles limiting creditors' rights generally.

Section 4.2 Continuing Obligation of Representations and Warranties. Upon discovery by the Foundation of a breach of any of such representations, warranties and covenants which materially and adversely affects the City, the Foundation shall give prompt written notice to the City.

ARTICLE 5 DEFAULT AND REMEDIES

Section 5.1 Events of Default by the Foundation. Upon the occurrence of any one or more of the following events, the City shall have the remedies specified in Section 5.3 of this Agreement:

(a) Failure by the Foundation to observe or perform in any material respect any covenant, condition or agreement in this Agreement or any other agreement between the City and the Foundation (or any entity controlled by the Foundation) to be observed or performed by the Foundation for a period of thirty (30) days (or such shorter time-frame set forth in the applicable agreement between the Parties) after written notice, specifying such failure and requesting that it be corrected, is given to the Foundation by the City;

(b) Entry of a decree or order of a court, agency, or supervisory authority having jurisdiction for the appointment of a conservator or receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings, or for the winding up or liquidation of its affairs, against the Foundation and such decree or order shall have remained in force, undischarged or unstayed for a period of ninety (90) days;

(c) Consent by the Foundation to the appointment of a conservator or receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings or relating to the Foundation or of or relating to all or substantially all of the Foundation's property;

(d) An admission by the Foundation in writing of the Foundation's inability to pay its debts generally as they become due, or the filing of a petition to take advantage of any applicable insolvency or reorganization statute, or the making of an assignment for the benefit of the Foundation's creditors or voluntarily suspending payment of the Foundation's obligations; or

(e) The discovery by the City that any representation of, or warranty by, the Foundation to the City was false in any material respect when made, or at any time it was warranted to be true pursuant to the terms of this Agreement.

Section 5.2 Events of Default by City. Upon the occurrence of any one or more of the following events, the Foundation shall have the remedies specified in Section 5.4 of this Agreement:

(a) Failure by the City to observe or perform in any material respect any covenant, condition or agreement in this Agreement to be observed or performed by the City for a period of thirty (30) days after written notice, specifying such failure and requesting that it be corrected, is given to the City by the Foundation; provided, however, if the failure stated in the notice cannot be remedied within such thirty (30) day period, failure by the City to commence to cure within thirty (30) days and to diligently pursue and complete the cure thereafter;

(b) Entry of a decree or order of a court, City, or supervisory authority having jurisdiction for the appointment of a conservator or receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings, or for the winding up or liquidation of its affairs, against the City and such decree or order shall have remained in force, undischarged or unstayed for a period of ninety (90) days;

(c) Consent by the City to the appointment of a conservator or receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar

proceedings or relating to the City or of or relating to all or substantially all of the City's property; or

(d) An admission by the City in writing of the City's inability to pay its debts generally as they become due, or the filing of a petition to take advantage of any applicable insolvency or reorganization statute, or the making of an assignment for the benefit of the City's creditors or voluntarily suspending payment of the City's obligations.

Section 5.3 Remedies for the Foundation Default. Whenever any event referred to in Section 5.1 of this Agreement shall occur and be continuing, the City may take any one or more of the following remedial steps:

(a) Terminate this Agreement by notice in writing to the Foundation.

(b) The City may take whatever other action at law or in equity necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of the Foundation under this Agreement.

Section 5.4 Remedies for City Default. Whenever any event referred to in Section 5.2 of this Agreement shall occur and be continuing, the Foundation may terminate this Agreement, but shall have no right to any other remedies available at law or at equity. The Foundation hereby waives any right to pursue any other remedy, and shall be estopped from taking or otherwise pursuing any other remedy.

Section 5.5 Non-Exclusive Remedies. Unless otherwise expressly provided, no remedy conferred or reserved is intended to be exclusive of any other available remedy, but each remedy shall be cumulative and shall be in addition to other remedies given under this Agreement or existing at law or in equity. No delay or omission to exercise any right or power accruing under this Agreement shall impair any such right or power or shall be construed to be a waiver of such right or power, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle a Party to exercise any remedy reserved to it under this Agreement, it shall not be necessary to give any notice, other than such notice as may be required under this Agreement.

ARTICLE 6 MISCELLANEOUS PROVISIONS

Section 6.1 Cooperation Between the Parties. The Parties shall cooperate, and use good faith, commercially reasonable, efforts to cause the performance of each Party's respective rights, duties, and obligations set forth in this Agreement to efficiently and effectively further the charitable purposes of the Foundation, and the public purposes of the City, of increasing and improving job training programs and opportunities within the Service Area. To the extent applicable, the Parties shall execute such additional documents, and take such other actions (at no cost to the City) as may be reasonably necessary to implement the goals and objectives of this Agreement, including, but not limited to, executing such additional documents required to establish or otherwise maintain the Foundation Account.

Section 6.2 Notices. Any notices, requests, demands, payments or other communications under this Agreement shall be in writing and shall be deemed to be duly given if delivered by United States mail, certified, with return receipt requested, or express delivery with a delivery receipt. Such notice shall be effective on the date shown on the delivery receipt as of the date of delivery, the date delivery was refused, or the date the notice was returned as undeliverable. Notices shall be addressed as follows:

If to the Foundation:

NOVAworks Foundation
505 W. Olive Ave.
Sunnyvale, CA 94086
Attn: President

If to the City:

City of Sunnyvale
456 W. Olive Ave.
Sunnyvale, CA 94086
Attn.: City Manager

or such other address or addresses as may be furnished in writing to the other Party pursuant to the procedures set forth in this Section.

Section 6.3 Authorized Representatives of City and the Foundation.

(a) The City Manager of the City is designated to be the authorized representative of the City for purposes of this Agreement. Whenever this Agreement provides for consent of the City, the written consent of the City Manager, or his or her designee, shall be deemed to be the consent of the City. Whenever this Agreement provides for any action of the City to be taken, such action shall be taken by the City Manager, or his or her designee.

(b) The Foundation designates the President of the Foundation to be the authorized representative of the Foundation for purposes of this Agreement. Whenever this Agreement provides for consent of the Foundation, the written consent of the President of the Foundation shall be deemed to be the consent of the Foundation.

Section 6.4 Compliance with Law. The Foundation agrees to comply with all applicable state and federal laws and regulations in the performance of its obligations under this Agreement.

Section 6.5 Timely Performance. Time is of the essence of this Agreement.

Section 6.6 Assignment of Rights or Duties Under this Agreement. The Foundation may not assign or delegate any of its rights, duties or obligations under this Agreement without the prior written approval of the City.

Section 6.7 Amendments. No amendment to this Agreement shall be effective unless it is reduced to writing and signed by the Parties.

Section 6.8 Waiver. No waiver of any term or provision of this Agreement shall be effective unless made in writing and signed by each of the Parties. Any written waiver shall be effective only in the instance given and then only with respect to the specific term or provision (or portion of a term or provision) of this Agreement to which it expressly relates and shall not be deemed or construed to constitute a waiver of any other term or provision (or portion of a term or provision) in any other instance.

Section 6.9 Binding on Successors. This Agreement inures to the benefit of, and is binding upon, the City and the Foundation and their respective agents, representatives, successors, and assigns; provided, however, the Foundation may only assign this Agreement as set forth in Section 6.6.

Section 6.10 Captions. The captions heading the various sections and subsections of this Agreement are for convenience only and do not in any way expand or limit the provisions of this Agreement.

Section 6.11 Construction of Terms. Any reference to either the singular or plural shall be deemed to include the other wherever it is necessary for the interpretation of this Agreement.

Section 6.12 Governing Law. This Agreement shall be interpreted under California law.

Section 6.13 Integration. This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written.

Section 6.14 No Third-Party Beneficiary. Nothing in this Agreement shall be construed to make any of the Parties hereto liable for any of the debts or other obligations of any other Party hereto, and the Parties hereto specifically acknowledge, agree and declare that no person is intended to be a third-party beneficiary of this Agreement.

Section 6.15 Term. This Agreement shall be effective as of the Effective Date and shall continue in effect until the earlier of: (i) this Agreement is terminated pursuant to Section 5.3 or Section 5.4; or (ii) either Party terminates this Agreement by providing written notice to the other Party at least thirty (30) days prior to the date of such termination.

Section 6.16 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

Remainder of Page Left Intentionally Blank

The City and the Foundation have executed this Agreement as of the Effective Date.

CITY:

CITY OF SUNNYVALE, a municipal corporation

Kent Steffens, City Manager

APPROVED AS TO FORM:

John A. Nagel, City Attorney

THE FOUNDATION:

NOVAWORKS FOUNDATION, a California
nonprofit public benefit corporation

By: _____
Poncho Guevara, President