

**CITY AND COUNTY OF SAN FRANCISCO  
DEPARTMENT OF CHILDREN, YOUTH, AND THEIR FAMILIES**

**MEMORANDUM OF UNDERSTANDING**

between

**CITY AND COUNTY OF SAN FRANCISCO**

and

**CITY COLLEGE OF SAN FRANCISCO**

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**THIS MEMORANDUM OF UNDERSTANDING** (this “Agreement”) is made this 13th day of July, 2017, in the City and County of San Francisco, State of California, by and between the **SAN FRANCISCO COMMUNITY COLLEGE DISTRICT** (“City College”) and the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (“City”) acting by and through the Agency (as hereinafter defined),

**WITNESSETH:**

**WHEREAS**, the City’s Board of Supervisors, on September 27, 2016, approved Ordinance No. 186-16, which established the San Francisco City College Enrollment Fee Assistance Fund; and

**WHEREAS**, the City intends that the fund established by Ordinance No. 186-16 will receive future funding to provide financial assistance for San Francisco residents attending City College – the Free City College Program – subject to annual appropriations by the Mayor and San Francisco Board of Supervisors through the City’s budget process; and

**WHEREAS**, the City’s Board of Supervisors, on January 10, 2017, approved Ordinance No. 03-17, a supplemental appropriation of \$9,000,000 of real property transfer tax revenue in Fiscal Year 2016-17 to provide funds to implement the Free City College program; and

**WHEREAS**, the City’s Board of Supervisors, on June 13, 2017, approved Ordinance No. 125-17, that renamed the San Francisco City College Enrollment Fee Assistance Fund as the San Francisco City College Financial Assistance Fund (“Fund”), and made other modifications to conform the Fund’s operation to the terms of this Memorandum of Understanding; and

**WHEREAS**, if the City establishes a reserve for the Free City College Program, the City shall develop written guidelines that govern access to those reserve funds; and

**WHEREAS**, enrollment for City College’s Fall 2017 semester begins May 3, 2017; and

**WHEREAS**, the City, through its Department of Children, Youth, and Their Families, wishes to support the Free City College Program by providing funds to City College to offset enrollment fees and provide other education-related financial support for students who are enrolled in credit courses at City College and California residents living in San Francisco; and

**WHEREAS**, the Free City College Program will not provide benefits based on individual need; and

**WHEREAS**, City College shall agree to use the funds to offset all enrollment fees for California residents living in San Francisco who are not eligible for other grants or financial aid that would cover such fees; and

**WHEREAS**, for students who already receive grants or financial aid that cover enrollment fees, the Free City College Program will provide grants to pay for education-related expenses, provided that no full-time student shall receive benefits worth more than \$500 from the program for any academic year and no part-time student shall receive benefits worth more than \$200 for any academic year; and

**WHEREAS**, City College may use up to \$500,000 over the course of the agreement to pay the costs of implementation and administration of the program, including but not limited to altering City College's online enrollment program and hiring financial aid counselors to provide information and support; and

**WHEREAS**, as a condition of this Agreement, the City and City College shall create an Oversight Committee to review City College's implementation of this Agreement and prepare an annual public report to the Mayor, the Board of Supervisors, and the Department of Children, Youth, and Their Families, as well as to City College, concerning the implementation of this agreement and disbursements from the City; and

**WHEREAS**, City desires to provide such funds on the terms and conditions set forth herein:

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

## **ARTICLE 1 DEFINITIONS**

**1.1 Specific Terms.** Unless the context otherwise requires, the following capitalized terms (whether singular or plural) shall have the meanings set forth below:

(a) **"ADA"** shall mean the Americans with Disabilities Act (including all rules and regulations thereunder) and all other applicable federal, state and local disability rights legislation, as the same may be amended, modified or supplemented from time to time.

(b) **"Agency"** shall mean the Department of Children, Youth, and Their Families.

(c) **"BOG Eligible Student"** shall mean an Eligible Student who has qualified for a California Community Colleges Board of Governors Fee Waiver.

(d) **"Charter"** shall mean the Charter of City.

(e) **"City College"** shall mean the San Francisco Community College District.

(f) **"Controller"** shall mean the Controller of City.

(g) **"Eligible Expenses"** shall mean expenses that City College will incur and Agency will reimburse to City College pursuant to this Agreement.

(h) “**Eligible Student**” shall mean Enrolled Students in either fall or spring terms (beginning Fall 2017) who are:

- 1) San Francisco residents;
- 2) California residents for tuition purposes or qualify for a non-residents exemption (AB540, AB13, AB2000); and
- 3) Have no outstanding holds.

(i) “**Enrolled Student**” shall mean students properly enrolled in classes at City College in compliance with City College established policies.

(j) “**Enrollment Fee**” shall mean the fee established by the California Community Colleges Board of Governors pursuant to California Education Code Section 76300(b)(1). The enrollment fee is currently \$46 per credit unit. If the Board of Governors increases or reduces the Enrollment Fee, the revised Enrollment Fee shall apply to this Agreement.

(k) “**Event of Default**” shall have the meaning set forth in Section 9.1.

(l) “**Funding Request**” shall have the meaning set forth in Section 5.4(a).

(m) “**Funds**” shall mean any and all funds allocated or disbursed to City College under this Agreement.

(n) “**Indemnified Parties**” shall mean: (i) City, including the Agency and all commissions, departments, agencies and other subdivisions of City; (ii) City's elected officials, directors, officers, employees, agents, successors and assigns; and (iii) all persons or entities acting on behalf of any of the foregoing.

(o) “**Losses**” shall mean any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, judgments, fees, expenses and costs of whatsoever kind and nature (including legal fees and expenses and costs of investigation, of prosecuting or defending any Loss described above) whether or not such Loss be founded or unfounded, of whatsoever kind and nature.

**1.2 Additional Terms.** The terms “as directed,” “as required” or “as permitted” and similar terms shall refer to the direction, requirement, or permission of the Agency. The terms “sufficient,” “necessary” or “proper” and similar terms shall mean sufficient, necessary or proper in the sole judgment of the Agency. The terms “approval,” “acceptable” or “satisfactory” or similar terms shall mean approved by, or acceptable to, or satisfactory to the Agency. The terms “include,” “included” or “including” and similar terms shall be deemed to be followed by the words “without limitation”.

**1.3 References to this Agreement.** References to this Agreement include: (a) any and all appendices, exhibits, schedules, attachments hereto; (b) any and all statutes, ordinances, regulations or other documents expressly incorporated by reference herein; and (c) any and all amendments, modifications or supplements hereto made in accordance with Section 14.2. References to articles, sections, subsections or appendices refer to articles, sections or subsections of or appendices to this Agreement, unless otherwise expressly stated. Terms such as “hereunder,” herein or “hereto” refer to this Agreement as a whole.

**ARTICLE 2**  
**APPROPRIATION AND CERTIFICATION OF FUNDS;**  
**LIMITATIONS ON CITY'S OBLIGATIONS**

**2.1 Risk of Non-Appropriation of Funds.** This Agreement is subject to the budget and fiscal provisions of the Charter. City shall have no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City College acknowledges that the City's budget decisions are subject to the discretion of its Mayor and Board of Supervisors. The City recognizes that this is intended to be a two year agreement and in order to provide City College some assurance that the program will not be interrupted during the two year period, City agrees to act in good faith and work to establish a reserve fund to support the program at least through the Fall 2018 academic semester.

**2.2 Certification of Controller; Guaranteed Maximum Costs.** No funds shall be available under this Agreement until prior written authorization certified by the Controller. In addition, as set forth in Section 21.10-1 of the San Francisco Administrative Code: City's obligations hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by City ordinances governing emergency conditions, City and its employees and officers are not authorized to request City College to perform services or to provide materials, equipment and supplies that would result in City College performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies specified in this Agreement unless this Agreement is amended in writing and approved as required by law to authorize the additional services, materials, equipment or supplies. City is not required to pay City College for services, materials, equipment or supplies that are provided by City College which are beyond the scope of the services, materials, equipment and supplies agreed upon herein and which were not approved by a written amendment to this Agreement having been lawfully executed by City. City and its employees and officers are not authorized to offer or promise to City College additional funding for this Agreement which would exceed the maximum amount of funding provided for herein. Additional funding for this Agreement in excess of the maximum provided herein shall require lawful approval, including appropriation by the City's Mayor and Board of Supervisors, and certification by the Controller. City is not required to honor any offered or promised additional funding which exceeds the maximum provided in this Agreement which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained. The Controller is not authorized to make payments on any agreement for which funds have not been certified as available in the budget or by supplemental appropriation.

**2.3 Automatic Termination for Nonappropriation of Funds.** This Agreement shall automatically terminate, without penalty, liability or expense of any kind to City, at the end of any Fiscal Year if funds are not appropriated for the next succeeding Fiscal Year. If funds are appropriated for a portion of any Fiscal Year, this Agreement shall terminate, without penalty, liability or expense of any kind to City, at the end of such portion of the Fiscal Year. City shall provide ninety (90) days' notice to City College prior to an early termination of this Agreement due to Non-appropriation of Funds.

**2.4 SUPERSEDURE OF CONFLICTING PROVISIONS.** IN THE EVENT OF ANY CONFLICT BETWEEN ANY OF THE PROVISIONS OF THIS ARTICLE 2 AND ANY OTHER PROVISION OF THIS AGREEMENT OR ANY OTHER DOCUMENT OR COMMUNICATION RELATING TO THIS AGREEMENT, THE TERMS OF THIS ARTICLE 2 SHALL GOVERN.

**ARTICLE 3  
TERM**

**3.1 Effective Date.** This Agreement shall become effective when the Controller has certified to the availability of funds as set forth in Section 2.2 and the Agency has notified City College thereof in writing.

**3.2 Duration of Term.** The term of this Agreement shall commence on the later of (a) July 1, 2017 and (b) the effective date specified in Section 3.1. Such term shall end at 11:59 p.m. San Francisco time on June 30, 2019.

**ARTICLE 4  
COOPERATION WITH MONITORING; PERSONNEL AND COMMUNICATIONS**

**4.1 Cooperation with Monitoring.** City College shall promptly comply with all standards, specifications and formats of City, as they may from time to time exist, related to evaluation, planning and monitoring of City College's obligations under this Agreement and shall cooperate in good faith with City in any evaluation, planning or monitoring activities conducted or authorized by City. Specifications and formats shall be mutually agreed to by both parties in advance within sixty (60) days of the date of this Agreement.

**4.2 City College's Personnel; Communications.** This Agreement shall be implemented only by staff under the direction and supervision of City College's Chancellor. All communications regarding this Memorandum of Understanding and the Free City College Program shall be addressed to the Chancellor of City College of San Francisco.

**ARTICLE 5  
USE AND DISBURSEMENT OF FUNDS**

**5.1 Maximum Amount of Funds.** In no event shall the amount of Funds disbursed hereunder exceed eleven million, two hundred and thirty-three thousand, nine hundred and four Dollars (\$11,233,904).

**5.2 Use of Funds.** City College shall use the Funds only for Eligible Expenses as set forth in Appendix A and for no other purpose.

**5.3 Eligibility and Distribution.** City College shall require students to complete a questionnaire at the time of registration to determine eligibility to the Free City College Program. City College shall through established matriculation process make a good faith effort to ensure that BOG Eligible Students exhaust all available funding sources for enrollment fee payment and education-related expenses, including federal and state financial aid. City College shall make a good faith effort to ensure that Eligible Students are able to access the Funds provided under this Agreement through its established financial aid process.

**5.4 Disbursement Procedures.** Funds shall be disbursed to City College as follows:

(a) City College shall submit to the Agency, quarterly invoices (on or before March 31, June 30, September 30, and December 31) and in the manner specified for notices pursuant to Article 15, a Funding Request substantially in the form attached as Appendix B. Agency shall pay City College for Eligible Expenses within thirty (30) days of receipt. Any Funding Request that is submitted and is not approved by the Agency shall be returned to City College with a brief statement of the reason for the Agency's rejection of such Funding Request. If any such rejection relates only to a portion of Eligible

Expenses itemized in such Funding Requests, the information or clarification as necessary to address the issue(s) raised by Agency.

(b) The Agency shall make all disbursements of Funds pursuant to this Section within 30 days by electronic funds transfer, unless the Agency and City College otherwise agree in writing.

**ARTICLE 6**  
**REPORTING REQUIREMENTS; AUDITS;**  
**PENALTIES FOR FALSE CLAIMS; OVERSIGHT COMMITTEE**

**6.1 Regular Reports.** City College shall provide an annual report and quarterly reports (accompanying invoices) in agreed to formats as provided in Section 6.5.

**6.2 Notification of Defaults or Changes in Circumstances.** City College shall notify City immediately of (a) any Event of Default or event that, with the passage of time, would constitute an Event of Default; and (b) any change of circumstances that would cause any of the representations and warranties contained in Article 8 to be false or misleading at any time during the term of this Agreement.

**6.3 Books and Records.** City College shall establish and maintain accurate files and records of all obligations established by this Agreement and the matters funded in whole or in part with Funds during the term of this Agreement. Without limiting the scope of the foregoing, City College shall establish and maintain accurate financial books and accounting records relating to Eligible Expenses incurred and Funds received and expended under this Agreement, together with all invoices, documents, payrolls, time records and other data related to the matters covered by this Agreement, whether funded in whole or in part with Funds. City College shall maintain all of the files, records, books, invoices, documents, payrolls and other data required to be maintained under this Section in a readily accessible location and condition for a period of not less than five (5) years after final payment under this Agreement or until any final audit has been fully completed, whichever is later.

**6.4 Inspection and Audit.** To the extent authorized by law, including but not limited to the Federal Education Right to Privacy Act (FERPA), City College shall make available to City, its employees and authorized representatives, during regular business hours all of the files, records, books, invoices, documents, payrolls and other data required to be established and maintained by this Agreement. City College shall permit City, its employees and authorized representatives to inspect, audit, examine and make excerpts and transcripts from any of the foregoing. The rights of City pursuant to this Section shall remain in effect so long as City College has the obligation to maintain such files, records, books, invoices, documents, payrolls and other data under this Article 6. Any requests to inspect, audit or examine must be made at least 30 days prior to time such records are to be available.

**6.5 Oversight Committee.** The City and City College shall establish an oversight committee to review City College's implementation of this Agreement and to prepare an annual public report for the Mayor, the Board of Supervisors, and the Agency. The Agency and City College shall provide administrative support for the Oversight Committee.

(a) **Membership.** The Oversight Committee shall consist of eleven members.

(i) The City College Board of Trustees shall appoint three members: one member of the Board of Trustees, one City College financial aid counselor or specialist, and one member from the staff of the Office of the Chancellor of City College.

(ii) The City College Academic Senate shall appoint two faculty members.

(iii) The City College Associated Students Executive Council shall appoint one student body representative.

(iv) The San Francisco Board of Supervisors shall appoint two members: one member of the Board of Supervisors and one person not otherwise eligible to serve in one of the dedicated seats on the Oversight Committee.

(v) The San Francisco Unified School District's Board of Education shall appoint one of its members.

(vi) The Mayor shall appoint one member from the staff of the Mayor's Office.

(vii) The Controller shall appoint one member from the staff of the Controller's Office.

(b) **Term; Vacancies.** Each member of the Oversight Committee shall serve at the pleasure of the member's appointing authority, and shall serve for the life of the Oversight Committee. Any member who misses three regular meetings of the Oversight Committee, without the express approval of the Oversight Committee at or before each missed meeting, shall be deemed to have resigned from the Oversight Committee ten days after the third unapproved absence. The Oversight Committee shall inform the appointing authority and the Clerk of the Board of Supervisors of the resignation. If City College's Board of Trustees, Academic Senate, Associated Students Executive Council, or the San Francisco Unified School District's Board of Education, declines to appoint a member to one of the seats for which it has appointing authority and leaves that seat vacant for more than 90 days, the San Francisco Board of Supervisors may appoint a member of the public to fill the seat until the appointing authority appoints a person to the seat.

(c) **Meetings.** The Oversight Committee shall meet at least once every three months and shall comply with the public meeting provisions of the Brown Act and the Sunshine Ordinance.

(d) **Termination.** Unless the San Francisco Board of Supervisors by ordinance extends the term of the Oversight Committee, the Oversight Committee shall terminate on December 31, 2019.

## **ARTICLE 7 REPRESENTATIONS AND WARRANTIES**

City College represents and warrants each of the following as of the date of this Agreement and at all times throughout the term of this Agreement:

**7.1 Location.** City College's operations, offices and headquarters are located at the address for notices set forth in Article 12.

**7.2 No Misstatements.** No document furnished or to be furnished by City College to City or City in connection with this Agreement, any Funding Request or any other document relating to any of the foregoing, contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

**7.3 Conflict of Interest.** Through its execution of this Agreement, City College acknowledges that it is familiar with Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

**ARTICLE 8  
INDEMNIFICATION AND GENERAL LIABILITY**

**8.1 Indemnification.**

(a) City College shall indemnify and hold City, its officers, employees and agents, harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages, arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of City College, its officers, agents or employees.

(b) In the event of concurrent negligence of City, its officers, employees and agents, and City College and its officers, employees and agents, the liability for any and all claims for injuries or damages to persons and/or property shall be apportioned under the California theory of comparative negligence as presently established or as may hereafter be modified..

**8.2 Reserved.**

**8.3 Reserved.**

**8.4 LIMITATION ON LIABILITY OF CITY.** CITY'S OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AGGREGATE AMOUNT OF FUNDS ACTUALLY DISBURSED HEREUNDER. NOTWITHSTANDING ANY OTHER PROVISION CONTAINED IN THIS AGREEMENT OR ANY OTHER DOCUMENT OR COMMUNICATION RELATING TO THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE FUNDS OR ANY ACTIVITIES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

**ARTICLE 9  
EVENTS OF DEFAULT AND REMEDIES**

**9.1 Events of Default.** The occurrence of any one or more of the following events shall constitute an "Event of Default" under this Agreement:

(a) **False Statement.** Any statement, representation or warranty contained in this Agreement, in any Funding Request or in any other document submitted to City under this Agreement is found by City to be intentionally false or misleading.

(b) **Failure to Comply with Applicable Laws.** City College fails to perform or breaches any of the terms or provisions of Article 13.

(c) **Failure to Perform Other Covenants.** City College fails to perform or breaches any other agreement or covenant of this Agreement to be performed or observed by City College as and when performance or observance is due and such failure or breach continues for a period of ten (10) days after the date on which such performance or observance is due.

(d) **Cross Default.** City College defaults under any other agreement between City College and City (after expiration of any grace period expressly stated in such agreement).

(e) **Voluntary Insolvency.** City College (i) is generally not paying its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of City College or of any substantial part of City College's property or (v) takes action for the purpose of any of the foregoing.

(f) **Involuntary Insolvency.** Without consent by City College, a court or government authority enters an order, and such order is not vacated within ten (10) days, (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to City College or with respect to any substantial part of City College's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of City College.

(g) **Failure to Pay.** City or Agency fails to pay City College pursuant to the terms of this Agreement.

**9.2 Remedies Upon Event of Default.** Upon and during the continuance of an Event of Default, City may do any of the following, individually or in combination with any other remedy:

(a) **Termination.** Either party may terminate this Agreement by giving a written termination notice to the other party and, on the date specified in such notice, this Agreement shall terminate and all rights of City College hereunder shall be extinguished. In the event of such termination, City College will be paid for Eligible Expenses in any Funding Request that was submitted and approved by City prior to the date of termination specified in such notice.

(b) **Withholding of Funds.** City may withhold all or any portion of Funds not yet disbursed hereunder, regardless of whether City College has previously submitted a Funding Request or whether City has approved the disbursement of the Funds requested in any Funding Request. Any Funds withheld pursuant to this Section and subsequently disbursed to City College after cure of applicable Events of Default shall be disbursed without interest.

(c) **Offset.** City may offset against all or any portion of undisbursed Funds hereunder or against any payments due to City College under any other agreement between City College and City the amount of any outstanding funds are required to satisfy obligations that arise due to a settlement or court judgment arising from a dispute between the parties.

(d) **Return of Funds.** City may demand the immediate return of any previously disbursed Funds that have been claimed or expended by City College in breach of the terms of this Agreement, together with interest thereon from the date of disbursement at the maximum rate permitted under applicable law.

**9.3 Remedies Nonexclusive.** Each of the remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The remedies contained herein are in addition to all other remedies available to either party at law or in equity by statute or otherwise and the exercise of any such remedy shall not preclude or in any way be deemed to waive any other remedy.

**ARTICLE 10  
DISCLOSURE OF INFORMATION AND DOCUMENTS**

**10.1 Proprietary or Confidential Information of City.** Both parties understand and acknowledge that, in the performance of this Agreement or in contemplation thereof, City College may have access to private or confidential information that may be owned or controlled by City and that such information may contain proprietary or confidential information, the disclosure of which to third parties may be damaging to City. City College agrees that all information disclosed by City to City College shall be held in confidence and used only in the performance of this Agreement. City College shall exercise the same standard of care to protect such information as a reasonably prudent nonprofit entity would use to protect its own proprietary or confidential data.

**10.2 Sunshine Ordinance.** City College acknowledges and agrees that this Agreement is subject to Section 67.24(e) of the San Francisco Administrative Code, which provides that contracts, including this Agreement, and all other records of communications between City and persons or entities seeking contracts, shall be open to inspection immediately after a contract has been awarded. All information provided by City College that is covered by such Section 67.24(e) (as it may be amended from time to time) will be made available to the public upon request.

**ARTICLE 11  
ASSIGNMENTS AND SUBCONTRACTING**

**11.1 No Assignment by City College.** City College shall not, either directly or indirectly, assign, transfer, hypothecate, subcontract or delegate all or any portion of this Agreement or any rights, duties or obligations of City College hereunder without the prior written consent of City. This Agreement shall not, nor shall any interest herein, be assignable as to the interest of City College involuntarily or by operation of law without the prior written consent of City. A change of ownership or control of City College or a sale or transfer of substantially all of the assets of City College shall be deemed an assignment for purposes of this Agreement.

**11.2 Agreement Made in Violation of this Article.** Any agreement made in violation of Section 11.1 shall confer no rights on any person or entity and shall automatically be null and void.

**ARTICLE 12  
NOTICES AND OTHER COMMUNICATIONS**

**12.1 Requirements.** Unless otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests and other communications hereunder shall be in writing, shall be addressed to the person and address set forth below and shall be (a) deposited in the U.S. mail, first class, certified with return receipt requested and with appropriate postage, (b) hand delivered or (c) sent via facsimile (if a facsimile number is provided below):

If to the Agency or City:	Department of Children, Youth, and Their Families 1390 Market Street, Suite 900 San Francisco, CA 94102 Attn: Maria Su, Executive Director
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If to City College:

**CITY COLLEGE OF SAN FRANCISCO**

50 Phelan Avenue, E200  
San Francisco, CA 94112  
Attn: Chancellor  
Facsimile No. 415-239-3918

**12.2 Effective Date.** All communications sent in accordance with Section 12.1 shall become effective on the date of receipt. Such date of receipt shall be determined by: (a) if mailed, the return receipt, completed by the U.S. postal service; (b) if sent via hand delivery, a receipt executed by a duly authorized agent of the party to whom the notice was sent; or (c) if sent via facsimile, the date of telephonic confirmation of receipt by a duly authorized agent of the party to whom the notice was sent or, if such confirmation is not reasonably practicable, the date indicated in the facsimile machine transmission report of the party giving such notice.

**12.3 Change of Address.** From time to time any party hereto may designate a new address for purposes of this Article 12 by notice to the other party.

**ARTICLE 13  
COMPLIANCE**

**13.1 RESERVED.**

**13.2 Nondiscrimination; Penalties.**

(a) **City College Shall Not Discriminate.** In the performance of this Agreement, City College agrees not to discriminate against any employee, City and County employee working with City College, applicant for employment with City College, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

(b) **Non-Discrimination in Benefits.** City College does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(c) **Condition to Contract.** As a condition to this Agreement, City College shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Division.

(d) **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by

reference and made a part of this Agreement as though fully set forth herein. City College shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including the remedies provided in such Chapters. Without limiting the foregoing, City College understands that pursuant to Sections 12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of fifty dollars (\$50) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against City College and/or deducted from any payments due City College.

**13.3 Compliance with ADA.** City College acknowledges that, pursuant to the ADA, programs, services and other activities provided by a public entity to the public, whether directly or through a grantee or contractor, must be accessible to the disabled public. City College shall not discriminate against any person protected under the ADA in connection with this Agreement and shall comply at all times with the provisions of the ADA.

**13.4 Prohibition on Political Activity with City Funds.** In accordance with San Francisco Administrative Code Chapter 12G, no funds appropriated by the City and County of San Francisco for this Agreement may be expended for organizing, creating, funding, participating in, supporting, or attempting to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity"). The terms of San Francisco Administrative Code Chapter 12G are incorporated herein by this reference. Accordingly, an employee working in any position funded under this Agreement shall not engage in any Political Activity during the work hours funded hereunder, nor shall any equipment or resource funded by this Agreement be used for any Political Activity. In the event City College, or any staff member in association with City College, engages in any Political Activity, then (i) City College shall keep and maintain appropriate records to evidence compliance with this section, and (ii) City College shall have the burden to prove that no funding from this Agreement has been used for such Political Activity. City College agrees to cooperate with any audit by the City or its designee in order to ensure compliance with this section. In the event City College violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement and any other agreements between City College and City, (ii) prohibit City College from bidding on or receiving any new City contract for a period of two (2) years, and (iii) obtain reimbursement of all funds previously disbursed to City College under this Agreement.

**13.5 Protection of Private Information.** City College has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. City College agrees that any failure of City College to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Agreement, bring a false claim action against the City College pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the City College.

**13.6 Compliance with Other Laws.** Without limiting the scope of any of the preceding sections of this Article 13, both parties shall keep themselves fully informed of City's Charter, codes, ordinances and regulations and all state, and federal laws, rules and regulations affecting the performance of this Agreement and shall at all times comply with such Charter codes, ordinances, and regulations rules and laws.

**ARTICLE 14  
MISCELLANEOUS**

**14.1 No Waiver.** No waiver by the Agency or City or/and City College of any default or breach of this Agreement shall be implied from any failure by the Agency or City or/and City College to take action on account of such default if such default persists or is repeated. No express waiver by the Agency or City or/and City College shall affect any default other than the default specified in the waiver and shall be operative only for the time and to the extent therein stated. Waivers by City or the Agency or/and City College of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by the Agency or City of any action requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.

**14.2 Modification.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

**14.3 Administrative Remedy for Agreement Interpretation.** Should any question arise as to the meaning or intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to mediation or other process agreed to by the parties.

**14.4 Governing Law; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, without regard to its conflict of laws principles. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

**14.5 Headings.** All article and section headings and captions contained in this Agreement are for reference only and shall not be considered in construing this Agreement.

**14.6 Entire Agreement.** This Agreement sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. The following appendices are attached to and part of this Agreement:

Appendix A-I, Eligible Expenses and Student Obligation for Withdrawal from Courses  
Appendix A-II, Cost Schedule  
Appendix B, Form of Funding Request

**14.7 Certified Resolution of Signatory Authority.** Upon request of City, City College shall deliver to City a copy of the resolution(s) authorizing the execution, delivery and performance of this Agreement, certified as true, accurate and complete by the secretary or assistant secretary of City College.

**14.8 Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

**14.9 Successors; No Third-Party Beneficiaries.** Subject to the terms of Article 11, the terms of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Nothing in this Agreement, whether express or implied, shall be construed to give any person or entity (other than the parties hereto and their respective successors and assigns and, in the case of

Article 8, the Indemnified Parties) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

**14.10 Survival of Terms.** The obligations of City College and the terms of the following provisions of this Agreement shall survive and continue following expiration or termination of this Agreement:

Section 6.3 Books and Records.

Article 10 Disclosure of Information and Documents

Article 8 Indemnification and General Liability

Article 14 Miscellaneous

**14.11 Further Assurances.** From and after the date of this Agreement, City College agrees to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper and usual to complete the transactions contemplated by this Agreement and to carry out the purpose of this Agreement in accordance with this Agreement.

**14.12 Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first specified herein.

**CITY**

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**DEPARTMENT OF CHILDREN, YOUTH,  
AND THEIR FAMILIES**

By: \_\_\_\_\_  
Maria Su  
Executive Director

**Approved as to Form:**

Dennis J. Herrera  
City Attorney

By: \_\_\_\_\_  
Andrew Shen  
Deputy City Attorney

**CITY COLLEGE:**

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By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

**CITY COLLEGE OF SAN FRANCISCO**

By: \_\_\_\_\_

Print Name: Thea Selby

Title: President, City College Board of Trustees

Federal Tax ID #: \_\_\_\_\_

City Vendor Number: \_\_\_\_\_

**Approved as to Form:**

City College of San Francisco, Office of the  
General Counsel

By: \_\_\_\_\_  
Steve Bruckman  
General Counsel

## **Appendix A-I. Eligible Expenses and Student Obligation for Withdrawal from Courses**

“BOG Eligible Student” shall mean an Eligible Student who has qualified for a California Community Colleges Board of Governors Fee Waiver.

“Eligible Expenses” shall mean expenses that City College will incur and Agency will reimburse to City College pursuant to this Agreement.

“Eligible Student” shall mean Enrolled Students in either fall or spring terms (beginning Fall 2017) who are:

- 1) San Francisco residents;
- 2) California residents for tuition purposes or qualify for a non-residents exemption (AB540, AB13, AB2000); and
- 3) Have no outstanding holds.

### A. Expenses that Agency will reimburse City College:

#### **1. Full Time BOG Eligible Students:**

BOG Eligible Students who attend City College on a full-time basis (12 or more credit units per semester) may receive grants up to \$250 per fall and spring semester that may be used for books, college fees other than enrollment fees, supplies, and transportation costs related to their enrollment at City College.

#### **2. Part Time BOG Eligible Students:**

BOG Eligible Students who attend City College on a part-time basis (6-11 credit units per semester) may receive grants up to \$100 per fall and spring semester that may be used for books, City College fees other than enrollment fees, supplies, and transportation costs related to their enrollment at City College.

#### **3. All Non-BOG Eligible Students:**

Other Eligible Students (who are not BOG Eligible Students) will receive free enrollment, with enrollment fees paid for through the Free City College program.

#### **4. Staffing Costs**

City College may request funding for staffing increases at City College (including hiring of new staff and existing staff time) and infrastructure costs directly related to the implementation of this Agreement, up to \$500,000.

#### **5. Ineligible Expenses**

Eligible Expenses shall not include:

- for City College staff and personnel, any personal or business-related costs or expenses related to meals, catering, transportation, lodging or fundraising;
- capital expenses;
- any costs or expenses which are prohibited under the terms and conditions of any federal or state grant supplying all or any portion of the Funds;
- penalties, late charges or interest on any late payments; or

- taxes or other amounts withheld from wages or salaries which have not actually been paid by City College during the term of this Agreement or which relate to periods before or after the term of this Agreement.

## B. Students Who Withdraw from Courses

### 1. **Pre-Deadline Withdrawal:**

If a student withdraw from a course before the date to receive a full refund, the student owes nothing to City College. (Refund deadlines appear next to each course listing on the college website at [www.ccsf.edu/Schedule](http://www.ccsf.edu/Schedule).)

### 2. **Post-Deadline Withdrawal:**

If a student withdraws from a course after the deadline to receive a full refund, then the student must pay City College for all applicable fees (enrollment fees or grants), and the money will be returned to City College for the Free City College Program.

## Appendix A-II Cost Schedule

Eligible Expenses shall not exceed the following estimated costs over the course of this Agreement:

<b>Annual Costs</b>		
	Arithmetic	Cost Estimate
Non-BOG, SF Residents, CA Residents (Incl. 20% growth)	(37,910 credits X \$46 per credit X 120% enrollment assumption)	\$ 2,092,632
\$500 Grants for Full-time BOG Students (Incl. 20% growth)	(2,630 Full-time BOG students X \$500 annual grant X 120% enrollment assumption)	\$ 1,578,000
\$200 Grants for Part-time BOG Students (Incl. 20% Growth)	(7,068 Part-time BOG students X \$200 annual grant X 120% enrollment assumption)	\$ 1,696,320
<b>COST PER ACADEMIC YEAR</b>		<b>\$ 5,366,952</b>

  

<b>Program Totals</b>		
One-time Staffing and Infrastructure Costs		\$ 500,000
Two Years of Tuition Credits and Grants		\$ 10,733,904
<b>TOTAL</b>		<b>\$ 11,233,904</b>

## Yearly Budgets

The costs for Year 1 (Fall 2017 and Spring 2018) may not exceed \$5,366,952 in total grants for students. Allotments within the three categories of annual costs in the table above may change by reallocating within the available funds for the year.

The costs for Year 2 (Fall 2018 and Spring 2019) may not exceed \$5,366,952 in total grants for students. Allotments within the three categories of annual costs in the table above may change by reallocating within the available funds for the year.

## Reporting Requirements

When demand for one of the three categories of annual costs reaches 80% of the total allocation for the year, City College will notify the Oversight Committee of this development within 3 days. City College must provide separate notice to the Oversight Committee when demand reaches the 80% threshold for any of the categories of annual costs.

### Appendix B--Form of Funding Request

City College shall provide the following cost information in connection with each Funding Request:

		<b>Costs</b>
Enrollment Fees	[Number of Eligible Students who do not qualify for Board of Governors Fee Waivers]	[Subtotal]
\$500 Grants for Full-Time BOG Eligible Students	[Number of Full-Time BOG Eligible Students]	[Subtotal]
\$200 Grants for Part-Time BOG Eligible Students	[Number of Part-Time BOG Eligible Students]	[Subtotal]
Funds Returned to City College for the Free City College Program (due to Eligible Students dropping classes after refund deadline)		[Subtotal]
Staffing and Infrastructure Costs directly related to the implementation of this Agreement		[Subtotal]
		[Total reimbursement]

With each Funding Request, City College shall also provide Department with the following information:

- the number of credits taken by each, individual Eligible Student who received funding through this Agreement (but not their names or other identifying information); and
- the number of Eligible Students who drop classes before the refund deadline, after the refund deadline, and after census with each Funding Request.