



**COUNTY OF SAN MATEO**  
Inter-Departmental Correspondence  
Human Services Agency



**DATE:** August 3, 2011  
**BOARD MEETING DATE:** September 13, 2011  
**SPECIAL NOTICE/HEARING:** None  
**VOTE REQUIRED:** Majority

**TO:** Honorable Board of Supervisors  
**FROM:** Beverly Beasley Johnson, J.D., Director, Human Services Agency  
**SUBJECT:** Revenue Agreement with San Mateo County Community College District – The Green Innovation Challenge Grant

**RECOMMENDATION:**

Adopt a Resolution authorizing:

- A. The President of the Board to execute a Revenue Agreement with San Mateo County Community College District (SMCCCD) in which San Mateo County agrees to participate in the Green Innovation Challenge Grant. The term is January 1, 2011 to June 30, 2012 for the amount of \$150,000, there is no Net County Cost.
- B. The Director of Human Services Agency or the Director's designee to execute contract amendments which modify the County's maximum fiscal obligation by no more than \$25,000 (in aggregate), and/or modify the contract term and/or services so long as the modified term or services is/are within the current or revised fiscal provisions.

**BACKGROUND:**

SMCCCD was awarded The Green Innovation Challenge (GIC) grant sponsored by the California Labor and Workforce Development Agency for training programs in the Automotive Hybrid industry. SMCCCD has partnered with San Mateo County Workforce Investment Board (WIB) to implement the program.

**DISCUSSION:**

There is a need for qualified workers for the automotive green industry. The goal of the GIC is to retrain dislocated workers for the automotive industries such as automotive hybrid technology. San Mateo County WIB will identify, recruit and assess local residents for placement into GIC training programs and provide overall support to the GIC grant through the Agreement with SMCCCD.

San Mateo County is the Contractor for this Agreement. County Counsel has reviewed and approved this Agreement and the Resolution.

Approval of this Agreement contributes to the Shared Vision 2025 outcome of a Prosperous Community by providing training to residents of San Mateo County in the automotive hybrid industry. Jobs in "green industries" have been identified as a high potential growth industry. Graduates will be assisted with finding employment and will contribute to a prosperous community. The grant will allow for up to 80 eligible participants to be recruited, of those, it is anticipated that 75% will graduate and 65% of graduates will obtain employment.

**Performance Measure(s):**

<b>Measure</b>	<b>FY 2010-11 Projected</b>	<b>FY 2011-12 Projected</b>
Graduation rate	75%	76%
Percentage of participants obtaining employment upon graduation.	65%	66%

**FISCAL IMPACT:**

The amount of this Revenue Agreement is \$150,000. The term of this Agreement is July 1, 2011 through June 30, 2012. Funding for this Revenue Agreement is included in the FY 2011-12 tentatively Adopted Budget. There is no Net County Cost associated with the acceptance of these funds from SMCCCD.

**RESOLUTION NO. \_\_\_\_\_**

**BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA**

**\* \* \* \* \***

**RESOLUTION AUTHORIZING (A) THE PRESIDENT OF THE BOARD TO EXECUTE A REVENUE AGREEMENT WITH SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT (SMCCCD) IN WHICH SAN MATEO COUNTY AGREES TO PARTICIPATE IN THE GREEN INNOVATION CHALLENGE (GIC) GRANT, THE TERM IS JANUARY 1, 2011 TO June 30, 2012 FOR THE AMOUNT OF \$150,000, THERE IS NO NET COUNTY COST; AND (B) THE DIRECTOR OF HUMAN SERVICES AGENCY OR THE DIRECTOR'S DESIGNEE TO EXECUTE CONTRACT AMENDMENTS WHICH MODIFY THE COUNTY'S MAXIMUM FISCAL OBLIGATION BY NO MORE THAN \$25,000 (IN AGGREGATE), AND/OR MODIFY THE CONTRACT TERM AND/OR SERVICES SO LONG AS THE MODIFIED TERM OR SERVICES IS/ARE WITHIN THE CURRENT OR REVISED FISCAL PROVISIONS**

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**RESOLVED**, by the Board of Supervisors of the County of San Mateo, State of California, that

**WHEREAS**, SMCCCD was awarded funding from the California Labor and Workforce Development Agency for training programs in the Automotive Hybrid industry; and

**WHEREAS**, San Mateo County was invited by SMCCCD to participate in the GIC grant project to identify, recruit and assess local Workforce Investment Act (WIA) eligible participants for placement into GICG training programs and provide support to the GIC grant per the Agreement with SMCCCD; and

**WHEREAS**, the Human Services Agency was awarded a revenue Agreement in the amount of \$150,000 for the term of January 1, 2011 through June 30, 2012; and

**WHEREAS**, the Board of Supervisors is being asked to authorize the Director of

Human Services Agency or the Director's Designee to execute contract amendments which modify the County's maximum fiscal obligation by no more than \$25,000 (in aggregate), and/or modify the contract term and/or services so long as the modified term or services is/are within the current or revised fiscal provisions so that training may continue should such amendments be required; and

**WHEREAS**, this Board has been presented with a form of such Agreement and said Board has examined and approved same as to both form and content and desires to enter into the same.

**NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED** that:

A. The President of this Board of Supervisors is hereby authorized and directed to execute said Agreement for and on behalf of the County of San Mateo; and the Clerk of this Board shall attest the President's signature thereto; and

B. The Director of the Human Services Agency or the Director's designee is hereby authorized to execute contract amendments which modify the County's maximum fiscal obligation by no more than \$25,000 (in aggregate), and/or modify the contract term and/or services so long as the modified term or services is/are within the current or revised fiscal provisions.

\* \* \* \* \*

**SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT AGREEMENT  
WITH The County of San Mateo on behalf of The San Mateo County Workforce Investment Board**

This Agreement is entered into this 1st day of January 2011 by and between the San Mateo County Community College District, a political subdivision of the State of California, having its principal business address at 3401 CSM Drive, San Mateo, CA 94402 (hereinafter called "District") and The County of San Mateo on behalf of The San Mateo County Workforce Investment Board, having its principal business address at 260 Harbor Blvd., Bldg A, Belmont, CA 94002 (hereinafter called "Contractor").

WHEREAS, it is necessary and desirable that Contractor be engaged by District for the purpose of performing services hereinafter described;

NOW, THEREFORE, in consideration of the payments hereinafter set forth, Contractor shall perform services for District in accordance with the terms and conditions set forth herein and in Exhibit A attached hereto and by this reference made a part hereof, and, in consideration of the services rendered in accordance with all terms and conditions set forth herein and in Exhibit A, District shall make payment to Contractor in the manner specified in Exhibit A.

1. TERM OF CONTRACT. This Agreement shall commence on January 1, 2011 and terminate on June 30, 2012. Notwithstanding the foregoing, if any applicable law limits the permissible length of the term of this Agreement, then the term of this Agreement shall not extend beyond the length permitted by law.
2. TERMINATION OF CONTRACT. The District may, at any time from execution of Agreement, terminate this Agreement, in whole or in part, for the convenience of the District, by giving written notice specifying the effective date and scope of such termination. Termination shall be effective on a date not less than thirty days from notice. In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the District and shall be promptly delivered to the District. In the event of termination, Contractor shall be paid for all work satisfactorily performed until termination, except where the contracting department determines the quality or quantity of the work performed is unacceptable. Such payment shall be that portion of the full payment, which is determined by comparing the work/services completed to the work/services required by the Agreement.

Contractor may terminate this Agreement upon thirty (30) days written notice to the District.

3. AMENDMENTS. This Agreement may be amended only by written instrument signed by both District and Contractor which writing shall state expressly that it is intended by the parties to amend the terms and conditions of this Agreement.
4. GOVERNING LAW AND EXTENT OF AGREEMENT. This Agreement, including all exhibits attached hereto and incorporated herein by reference, shall be construed in and governed by the laws of the State of California and constitutes the sole agreement of the parties hereto and correctly states the rights, duties and obligations of each party. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are of no force or effect.
5. INDEPENDENT CONTRACTORS. It is understood that this is an Agreement by and between independent contractors and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture of association, or any other relationship whatsoever

other than that of independent contractor. Except as District may specify in writing, Contractor shall have no authority, expressed or implied, to act on behalf of District in any capacity whatsoever. Contractor shall have no authority, expressed or implied, pursuant to this Agreement to bind District to any obligation whatsoever.

6. TIME OF PERFORMANCE. Time is of the essence and Contractor shall perform the services required by this Agreement in an expeditious and timely manner so as not to unreasonably delay the purpose of this Agreement.
7. FAIR EMPLOYMENT PRACTICES/EQUAL OPPORTUNITY ACTS. District is an equal opportunity employer. By entering into this Agreement, Contractor certifies that he/she is in compliance with the Equal Employment Opportunity Requirement of Executive Order 11246, Title VII of the Civil Rights Act of 1973, the California Fair Employment Practices Act and any other Federal or State laws and regulations related to Equal Employment Opportunity. Contractor's personnel policies shall be made available to District upon request.
8. OWNERSHIP OF PROPERTY. All tangible and intangible property developed, produced and/or provided by Contractor under this Agreement shall become the sole property of District. District's ownership of property developed, produced and/or provided under this Agreement includes, but is not limited to, any specifications, drawings, sketches, models, samples, tools, computer programs, technical information, confidential business information, scripts, customer or personnel information or data, written, oral or otherwise (all hereinafter referred to as "Information"), obtained by Contractor from District or developed by Contractor hereunder or in contemplation hereof shall remain or become the sole property of District. Any copyrightable works or other intellectual property developed in connection with this Agreement shall remain or shall become the sole property of District and, in accordance with Education Code section 72207, Contractor understands that the District's governing board may secure copyrights, in the name of the District, to all such works. If Contractor desires to make use of any such District work for any purpose not related to this agreement, Contractor must first secure prior written consent of District for such use. All copies of such Information in written, graphic or other tangible form shall be returned to District upon termination of this Agreement. Information shall be kept confidential by Contractor, shall be used only in performing hereunder, and may be used for other purposes only upon prior written approval of District Executive Vice Chancellor.
9. LICENSES, PATENTS, PERMITS. Prior to commencement of work/services to be performed under this Agreement, Contractor shall apply for, obtain and maintain in current status, at his/her own expense, any license, permit or approval required from any agency for the performance of said work/services, or forfeit any right to compensation under this Agreement.
10. LIABILITY AND INSURANCE. Contractor shall be responsible for all damages to persons or properties that occur as a result of Contractor's or Contractor's employees negligence in connection with the performance of this Agreement.

The Contractor shall take out and maintain during the life of this Agreement such liability insurance, be self insured or combination thereof as shall protect him/her while performing work covered by this Agreement from any and all claims for damages and all operations under this Agreement, whether such operations be by himself/herself or by any Subcontractor or by anyone directly or indirectly employed by either of them. Contractor shall procure and maintain Comprehensive Bodily Injury Liability insurance which provides for injuries including accidental death, per any one occurrence in an amount not less than \$2,000,000 per occurrence and \$4,000,000 annual aggregate;

Certificates of Insurance for coverages required herein shall be filed with District's Executive Vice

Chancellor *prior to the commencement of work*. The certificates shall provide that if the policy or policies be canceled by the insurance company or Contractor during the term of this Agreement, thirty (30) days written notice prior to the effective date of such cancellation will be given to District's Executive Vice Chancellor. The certificates shall also show the information that the San Mateo County Community College District is named on Contractor's Comprehensive General Liability as co-insured or added thereon by endorsement as a named insured or additional insured. If added by endorsement, certificates shall clearly state that "The San Mateo County Community College District, its Officers, Agents and Employees are named as additional insured per attached endorsement" and that such insurance policy shall be primary to any insurance or self insurance maintained by the District. Contractor shall provide District with the endorsement to the policy that names District as additional insured.

11. **WORKERS' COMPENSATION INSURANCE.** The Contractor shall have in effect, during the life of this Agreement that the Contractor has employees, Workers' Compensation and Employer Liability Insurance providing full statutory coverage. In signing this Agreement, Contractor certifies awareness of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and certifies compliance with such provisions before commencing the performance of this work of the Agreement as set forth in California Labor Code section 1861.

Initial

I am aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of any work required under this Agreement with employees.

Initial (if applicable)

I have no employees and, therefore, will not submit a Certificate of Workers' Compensation.

12. **Mutual Hold Harmless**

a. It is agreed that Contractor shall defend, save harmless and indemnify District, its officers and employees from any and all claims which arise out of the terms and conditions of this Agreement and which result from the negligent acts or omissions of Contractor, its officers and/or employees.

b. It is agreed that District shall defend, save harmless, and indemnify Contractor, its officers and employees from any and all claims for injuries or damage to persons and/or property which arise out of the terms and conditions of this Agreement and which result from the negligent acts or omissions of County, its officers and/or employees.

c. In the event of concurrent negligence of District, its officers and/or employees, and Contractor, its officers and/or employees, then the liability for any and all claims for injuries or damage to persons and/or property which arise out of terms and conditions of this Agreement shall be apportioned according to the California theory of comparative negligence.

13. **ASSIGNABILITY.** Contractor shall not assign this Agreement or any portion thereof to a third party without the prior written consent of District, and any attempted assignment without such prior written consent in violation of this paragraph 12 is null and void and automatically shall terminate this Agreement. In the event of any assignment, Contractor shall remain liable to District as principal for the performance of all obligations under this Agreement.

14. FAILURE TO PERFORM. If, at any time, in the opinion of District, Contractor fails to render services of proper quality or has failed to perform, keep, and observe any of the terms or conditions herein contained on the part of Contractor to be performed, kept, and observed, District may give Contractor written notice to correct such conditions or cure such default; and if any such condition or default shall continue for thirty (30) days after said written notice, then, and in that event, this Agreement shall cease and expire. Thereupon District or its duly authorized representative may employ other parties or carry this Agreement to completion as District may deem proper.
15. FORCE MAJEURE. Neither party shall be responsible for delays or failure in performance resulting from acts beyond the control of such parties. Such acts shall include, but not be limited to, Acts of God, labor disputes, civil disruptions, acts of war, epidemics, fire, electrical power outages, earthquakes or other natural disasters.
16. DISPUTE RESOLUTION. Should any dispute arise out of this Agreement, the parties agree to meet in mediation and attempt to reach a resolution with the assistance of a mutually agreed upon mediator. The mediation process shall provide for the selection, within fifteen (15) days of either party notifying the other of the existence of a dispute, by both parties of a disinterested third person as mediator and shall be concluded within forty-five (45) days from the commencement of the mediation unless a time requirement is extended by stipulation of both parties.

If a mediated settlement is reached, neither party shall be the prevailing party for the purposes of the mediated settlement. Each party agrees to bear an equal quota of the expenses of the mediator.

Neither party shall be permitted to file legal action without first meeting in mediation and maintaining a good faith attempt to reach a mediated resolution.

In the event that a mediated settlement is not reached, the parties agree that if any lawsuit is filed that it is filed in San Mateo County Superior Court.
17. SEVERABILITY. Should any part of this Agreement be declared through a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or to carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement, absent the unexercised portion, can be interpreted reasonably to give effect to the intentions of the parties.
18. WAIVERS. No waiver of default by District of any terms or conditions hereof to be performed, kept, or observed by Contractor shall be construed to be or act as a waiver of any subsequent default of any of the terms and conditions herein contained.



19. NOTICES. All notices to be given between the parties hereto shall be in writing and may be served by commercial express/overnight courier service or by depositing the same in the United States mail, postage prepaid and certified receipt requested and addressed to:

"DISTRICT"  
San Mateo County Community College District  
Kathy Blackwood, Interim Executive Vice Chancellor  
3401 CSM Drive  
San Mateo, CA 94402

"CONTRACTOR"  
The County of San Mateo on behalf of The San Mateo County Workforce Investment Board  
Mike Curran, Workforce Development Manager  
260 Harbor Blvd, Bldg A.  
Belmont, CA 94002

Either party by written notice to the other party may change the address of the notice or the names of the persons or parties to receive written notices.

20. EXPENDITURE OF PUBLIC FUNDS. Contractor agrees to comply with Government Code Section 8546.7 which provides that any contract involving expenditure of public funds in excess of \$10,000 requires that the contracting parties shall be subject to the examination and audit of the Auditor General for a period of three (3) years after final payment under the contract.
21. CAPTIONS. Any captions to or headings of the articles, sections, subsections, paragraphs, or subparagraphs of this Agreement are solely for the convenience of the parties, are not a part of this Agreement, and shall not be used for the interpretation or determination of validity of this Agreement or any provision hereof.
22. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute one and the same instrument.
23. EXECUTION. By their signatures below, each of the following represents that they have authority to execute this Agreement and to bind the party on whose behalf their execution is made.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate.

**SAN MATEO COUNTY COMMUNITY  
COLLEGE DISTRICT**

By: Kathy Blackwood  
Kathy Blackwood, Int. Exec. Vice Chancellor

Date: 7/26/11

**CONTRACTOR**

By: \_\_\_\_\_  
County of San Mateo  
President, Board of Supervisors

Date: \_\_\_\_\_

### EXHIBIT A – SCOPE OF WORK

<b>Task</b>	<b>Service to be Performed</b>	<b>Delivered Accountabilities</b>
1	The Contractor, will identify, recruit and process WIA eligible participants for training and employment in Hybrid automotive technologies.	To provide the SMCCCD-Skyline College with entry level and underemployed and dislocated workers who are eligible under the provisions of the Workforce Investment Act (WIA) for training. The College shall provide Contractor with direction and guidance regarding the required and/or desired skill levels and aptitudes for each participant pool.
2	Contractor will provide core/intensive services to provide assistance with job readiness skills, resume writing, interviewing and other logistical assistance to maximize their training and employment possibilities.	Ongoing case management and counseling to assist participants registered in Hybrid automotive technologies classes and maintain participant files on services provided.
3	Contractor will track and prepare monthly participant performance report for students enrolled in SMCCCD-Skyline College's Hybrid automotive technology training program.	Contractor will prepare and maintain training and employment data for SMCCCD-Skyline College registrants and provide this report to the College for its inclusion in the monthly report due to EDD by the 15 <sup>th</sup> of each month.
4	Contractor will work with SMCCCD-Skyline College to conduct follow-up services tracking employment statistics and advanced training statistics.	Contractor will work with the College to follow the training and employment outcomes of students within a 6 month period after exiting the program, with an end-date of June 30, 2012. Any participants completing training after December 31, 2011 shall receive follow up services through the end of this contract on June 30, 2012, which may be less than six months.
5	Contractor will participant in industry driven meetings coordinated by the CC collaborative and present workforce and industry trends affecting the State of California training and employment outlook in alternative fuel transport technology.	Contractor will be present at such meetings and prepared to present the State's workforce and training outlook as it relates to the alternative and renewable fuel vehicle and transport technology.

## EXHIBIT B - INVOICE DATES

Services shall be billed to the "San Mateo County Community College District" and become payable upon receipt of detailed invoice(s) specifying services rendered and costs associated with such services during that activity period. The following is a quarterly schedule for invoicing:

Invoice	Date of Invoice	For Activity Period	Delivered to Skyline
1	September 30, 2011	7/1/11-9/30/11	October 5, 2011
2	December 31, 2011	10/1/11-12/31/11	January 5, 2012
3	March 31, 2012	1/1/12-3/31/12	April 5, 2012
4	June 30, 2012	4/1/12-6/30/12	July 5, 2012

The total amount under this Agreement shall not exceed \$ 150,000.

Invoices and accompanying invoice expense reports should be emailed to:

Allison Mello  
melloa@smccd.edu  
Skyline College  
3300 College Drive  
San Bruno, CA 94066

# APPENDIX C

## General Provisions and Standards of Conduct

### 1. Compliance

In performance of this subgrant agreement, Subgrantee will fully comply with:

- a) The provisions of the Workforce Investment Act (WIA) and all regulations, legislation, directives, policies, procedures and amendments issued pursuant thereto.
- b) All State legislation and regulations to the extent permitted by federal law and all policies, directives and/or procedures, which implement the WIA.
- c) The provisions of Public Law 107-288, Jobs for Veterans Act, as the law applies to Department of Labor (DOL) job training programs
- d) Subgrantee will ensure diligence in managing programs under this subgrant agreement, including performing appropriate monitoring activities and taking prompt corrective action against known violations of the WIA. Subgrantee agrees to conform to the provisions of the WIA and the contract requirements as referenced in 29 CFR Part 95, Appendix A and 29 CFR, Part 97.36(i)(1-13).

This subgrant agreement contains the entire agreement of the parties and supersedes all negotiations, verbal or otherwise and any other agreement between the parties hereto. This subgrant agreement is not intended to and will not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association between the Subgrantor and the Subgrantee. Subgrantee represents and warrants it is free to enter into and fully perform this subgrant agreement.

### 2. Certification / Assurances

Except as otherwise indicated, the following certifications apply to all Subgrantee's.

- a) Corporate Registration: The Subgrantee, if it is a corporation, certifies it is registered with the Secretary of State of the State of California.
- b) The Subgrantee agrees to comply with the Americans with Disabilities Act (ADA) of 1990, which, prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to ADA. (42 U.S.C.12101 et seq.
- c) Sectarian Activities: The Subgrantee certifies that this subgrant agreement does not provide for the advancement or aid to any religious sect, church or creed, or sectarian purpose nor does it help to support or sustain any school, college, university, hospital or other institution controlled by any religious creed, church, or sectarian denomination whatsoever, as specified by Article XVI, Section 5, of the Constitution, regarding separation of church and state.
- d) National Labor Relations Board: The Subgrantee (if not a public entity), by signing this subgrant agreement, does swear under penalty of perjury, that no more than one final unappeasable finding of contempt of court by a federal court has been issued against the Subgrantee within the immediately preceding two-year period because of Subgrantee's failure to comply with an order of a federal court, which

orders the Subgrantee to comply with an order of the National Labor Relations Board (PCC10296).

- e) **Prior Findings:** Subgrantee, by signing this subgrant agreement, does swear under penalty of perjury, that it has not failed to satisfy any major condition in a current or previous subgrant agreement with the DOL or the State of California and has not failed to satisfy conditions relating to the resolution of a final finding and determination, including repayment of debts.
- f) **Drug-Free Workplace Certification:** By signing this subgrant agreement the Subgrantee hereby certifies under penalty of perjury under the laws of the State of California that the Subgrantee will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:
  - (1) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
  - (2) Establish a Drug-Free Awareness Program as required to inform employees about:
    - the dangers of drug abuse in the workplace;
    - the person's or organization's policy of maintaining a drug-free workplace;
    - any available counseling, rehabilitation and employee assistance programs; and,
    - penalties that may be imposed upon employees for drug abuse violations.
  - (3) Every employee who works on this subgrant agreement will:
    - receive a copy of the company's drug-free policy statement; and,
    - agree to abide by the terms of the company's statement as a condition of employment on the subgrant/contract.
- g) **Child Support Compliance Act:** In accordance with the Child Support Compliance Act, the Subgrantee recognizes and acknowledges:
  - (1) The importance of child and family support obligations and shall fully comply with applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and that to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Employee Registry maintained by the California Employment Development Department (EDD).
- h) **Debarment and Suspension Certification:** By signing this subgrant agreement, the Subgrantee hereby certifies under penalty of perjury under the laws of the State of California that the Subgrantee will comply with regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98.510, that the prospective

participant (i.e., grantee), to the best of its knowledge and belief, that it and its principals:

- (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transitions by any federal department or agency.
- (2) Have not within a three-year period preceding this subgrant agreement been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property.
- (3) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state or local) with commission of any of the offenses enumerated in Section 2 of this certification.
- (4) Have not within a three year period preceding this subgrant agreement had one or more public transactions (federal, state or local) terminated for cause of default.

Where the Subgrantee is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this agreement.

- i) Lobbying Restrictions: By signing this subgrant agreement the Subgrantee hereby assures and certifies to the lobbying restrictions which are codified in the DOL regulations at 29 CFR Part 93.
  - (1) No federal appropriated funds have been paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this federal contract, grant loan, or cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
  - (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress, in connection with this subgrant agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
  - (3) The undersigned shall require that the language of the lobbying restrictions be included in the award documents for subgrant agreement transactions over \$100,000 (per OMB) at all tiers (including subgrant agreements, contracts and subcontracts, under grants, loan, or cooperative agreements), and that all subrecipients shall certify and disclose accordingly.

- (4) This certification is a material representation of fact upon which reliance is placed when this transaction is executed. Submission of the Lobbying Certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, and U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.
- j) Priority Hiring Considerations:  
If this subgrant includes services in excess of \$200,000, the Subgrantee shall give priority consideration in filling vacancies in positions funded by the subgrant to qualified recipients of aid under Welfare and Institutions Section Code 11200 in accordance with Public Contract Code § 10353.
- k) Sweatfree Code of Conduct:
- 1) All Subgrantees contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The Subgrantee further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at [www.dir.ca.gov](http://www.dir.ca.gov), and Public Contract Code Section 6108.
  - 2) The Subgrantee agrees to cooperate fully in providing reasonable access to the subgrantees' records, documents, agents or employees, or premises if reasonably required by authorized officials of the Subgrantor, the Department of Industrial Relations, or the Department of Justice to determine the subgrantees' compliance with the requirements under paragraph a of the Sweatfree Code of Conduct.
- l) Unenforceable Provision: In the event that any provision of this subgrant agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this subgrant agreement have force and effect and shall not be affected hereby.
- m) Nondiscrimination Clause
- 1) The conduct of the parties to this subgrant agreement will be in accordance with Title VI of the Civil Rights Act of 1964, and the Rules and Regulations promulgated there under and the provisions of WIA, Section 188. In addition:
    - (a) As a condition to the award of financial assistance from the Department of Labor under Title I of WIA, the grant applicant assures that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

Section 188 of the Workforce Investment Act of 1988 (WIA), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age disability, political affiliation or belief, and against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIA Title I – financially assisted program or activity;

Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color and national origin;

Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;

The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and

Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.

The grant applicant also assures that it will comply with 29 CFR part 37 and all other regulations implementing the laws listed above. This assurance applies to the grant applicant's operation of the WIA Title I-financially assisted program or activity, and to all agreements that grant applicant makes to carry out the WIA Title I-financially assisted program or activity. The grant applicant understands that the United States has the right to seek judicial enforcement of this assurance.

- (b) This Subgrantee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the subgrant agreement.
- (c) This Subgrantee agrees to conform to nondiscrimination provisions of the WIA and other federal nondiscrimination requirements referenced in 29 CFR, Part 37.

n) Indemnification:

- 1) The following provision applies only if the Subgrantee is a governmental entity: Pursuant to the provision of Section 895.4 of the California Government Code, each party agrees to indemnify and hold the other party harmless from all liability for damage to persons or property arising out of or resulting from acts or omissions of the indemnifying party.
- 2) The following provision applies only if the Subgrantee is a non-governmental entity: The Subgrantee agrees to the extent permitted by law, to indemnify, defend and save harmless the Subgrantor, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, materials persons, laborers and any other persons, firms or corporations, furnishing or supplying work, services, materials, or supplies in connection with the performance of this agreement, and from any and all claims and losses accruing or resulting to any persons, firms or corporations



which may be injured or damaged by the Subgrantee in the performance of this subgrant agreement.

Failure to comply with all requirements of the certifications in Section 2 may result in suspension of payment under this subgrant agreement or termination of this subgrant agreement or both, and the Subgrantee may be ineligible for award of future state subgrant agreements/contracts if the department determines that any of the following has occurred: (1) false information on the certifications, or (2) violation of the terms of the certifications by failing to carry out the requirements as noted above.

- o) **Salary and Bonus Limitations:** In compliance with Public Law 109-234, none of the funds appropriated in Public Law 109-149 or prior Acts under the hearing "Employment and Training" that are available for expenditure on or after June 15, 2006, shall be used by a recipient or subrecipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II, except as provided for under section 101 of Public Law 109-149. This limitation shall not apply to vendors providing goods and services as defined in OMB Circular A-133. Where States are recipients of such funds, States may establish a lower limit for salaries and bonuses of those receiving salaries and bonuses from subrecipients of such funds, taking into account factors including the relative cost-of-living in the States, the compensation levels for programs involved including Employment and Training Administration programs. See Training and Employment Guidance Letter number 5-06 for further clarification.

The incurrence of costs and receiving reimbursement for these costs under this award certifies that your organization has read the above special condition and is in compliance.

- p) **Clean Air and Water Act:** For subgrants in excess of \$100,000, compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857 {h}), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and the U.S. Environmental Protection Agency regulations (40 CFR 15, revised as of July 1, 1989).

### 3. Standards of Conduct

The following standards apply to all Subgrantees.

- a) **General Assurance:** Every reasonable course of action will be taken by the Subgrantee in order to maintain the integrity of this expenditure of public funds and to avoid favoritism and questionable or improper conduct. This subgrant agreement will be administered in an impartial manner, free from efforts to gain personal, financial or political gain. Subgrantee agrees to conform to the nondiscrimination requirements as referenced in WIA, Section 188.
- b) **Avoidance of Conflict of Economic Interest:** An executive or employee of the Subgrantee, an elected official in the area or a member of the Local Board, will not solicit or accept money or any other consideration from a third person, for the performance of an act reimbursed in whole or part by the Subgrantee or Subgrantor: Supplies, materials, equipment or services purchased with subgrant agreement

funds will be used solely for purposes allowed under this subgrant agreement. No member of the Local Board will cast a vote on the provision of services by that member (or any organization, which that member represents) or vote on any matter which would provide direct financial benefit to that member (or immediate family of the member) or any business or organization which the member directly represents.

#### 4. Coordination

Subgrantee will, to the maximum extent feasible, coordinate all programs and activities supported under this part with other programs under the WIA, including the Wagner-Peyser Act, Title 38 of the United States Code, and other employment and training programs at the state and local level.

Subgrantee will consult with the appropriate labor organizations and/or employer representatives in the design, operation or modification of the programs under this subgrant agreement.

#### 5. Subcontracting

- a) Any of the work or services specified in this subgrant agreement which will be performed by other than by the Subgrantee will be evidenced by a written agreement specifying the terms and conditions of such performance.
- b) The Subgrantee will maintain and adhere to an appropriate system, consistent with federal, state and local law, for the award and monitoring of contracts which contain acceptable standards for insuring accountability.
- c) The system for awarding contracts will contain safeguards to insure that the Subgrantee does not contract with any entity whose officers have been convicted of fraud or misappropriation of funds within the last two years.

#### 6. Insurance

Except for city and county governmental entities, Subgrantees must provide the Subgrantor evidence of the coverage specified in a, b, c and d below. The evidence of coverage shall include the registration number of the subgrant agreement for identification purposes.

- a) Subgrantee will obtain a fidelity bond in an amount of not less than \_\_\_\_\_, prior to the receipt of funds under this subgrant agreement. If the bond is canceled or reduced, Subgrantee will immediately so notify the Subgrantor. In the event the bond is canceled or revised, the Subgrantor will make no further disbursements until it is assured that adequate coverage has been obtained.
- b) Subgrantee will provide general liability insurance with a combined limit of \$1,000,000 or public liability and property damage coverage with a combined limit of not less than \$1,000,000.
- c) Subgrantee will provide broad form automobile liability coverage with limits as set forth in (b) above, which applies to both owned/leased and non-owned automobiles used by the Subgrantee or its agents in performance of this subgrant agreement, or, in the event that the Subgrantee will not utilize owned/leased automobiles but intends to require employees, trainees or other agents to utilize their own automobiles in performance of this subgrant agreement, Subgrantee will secure and

maintain on file from all such employees, trainees or agents a self-certification of automobile insurance coverage.

- d) Subgrantee will provide Worker's Compensation Insurance, which complies with provisions of the California Labor Code, covering all employees of the Subgrantee and all participants enrolled in work experience programs. Medical and Accident Insurance will be carried for those participants not qualifying as "employee" (Section 3350, et seq. of the California Labor Code) for Worker's Compensation.
- e) The Subgrantor will be named as "Certificate Holder" of policies secured in compliance with paragraphs a-d above and will be provided certificates of insurance or insurance company "binders" prior to any disbursement of funds under this subgrant agreement, verifying the insurance requirements have been complied with. The coverage noted in b and c above must contain the following clauses:
  - (1) Insurance coverage will not be canceled or changed unless 30 days prior to the effective date of cancellation or change written notice is sent by the Subgrantee to:

WIA - Financial Management Unit  
Employment Development Department  
P. O. Box 826880, MIC 69  
Sacramento, CA 94280-0001

- (2) State of California, its officers, agents, employees and servants are included as additional insured, but only insofar as the operations under this subgrant agreement are concerned.
- (3) The State of California is not responsible for payment of premiums or assessments on this policy

## 7. Resolution

A county, city, district or other local public body must provide the state with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of this subgrant agreement. Preferably resolutions should authorize a designated position rather than a named individual.

## 8. Funding

It is mutually understood between the parties that this subgrant agreement may have been written before ascertaining the availability of congressional and legislative appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the subgrant agreement was executed after that determination was made.

This subgrant agreement is valid and enforceable only if (1) sufficient funds are made available by the State Budget Act of the appropriate state fiscal years covered by this subgrant agreement for the purposes of this program and; (2) sufficient funds available to the state by the United States Government for the fiscal years covered by this

subgrant agreement for the purposes of this program. In addition, this subgrant agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress and Legislature or any statute enacted by the Congress and Legislature which may affect the provisions, terms, or funding of this subgrant agreement in any manner.

- a) At the expiration of the terms of this subgrant agreement or upon termination prior to the expiration of this subgrant agreement, funds not obligated for the purpose of this subgrant agreement will be immediately remitted to the Subgrantor, and no longer available to the Subgrantee.
- b) The Subgrantor retains the right to suspend financial assistance, in whole or in part, to protect the integrity of the funds or to ensure proper operation of the program, providing the Subgrantee is given prompt notice and the opportunity for an informal review of the Subgrantor's decision. The Chief Deputy Director or his designee will perform this informal review and will issue the final administrative decision within 60 days of receiving the written request for review. Failure on the part of the Subgrantee or a Subcontractor of the Subgrantee to comply with the provisions of this subgrant agreement, or with the WIA or regulations, when such failure involves fraud or misappropriation of funds, may result in immediate withholding of funds.

#### 9. Accounting and Cash Management

- a) Subgrantee will comply with controls, record keeping and fund accounting procedure requirements of WIA, federal and state regulations and directives to ensure the proper disbursement of, and accounting for, program funds paid to the Subgrantee and disbursed by the Subgrantee, under this subgrant agreement.
- b) Subgrantee will submit requests for cash to coincide with immediate cash needs and assure that no excess cash is on deposit in their accounts or the accounts of any sub-contracting service provider in accordance with procedures established by the Subgrantor. Failure to adhere to these provisions may result in suspending cash draw down privileges and providing funds through a reimbursement process.
- c) The Subgrantor retains the authority to adjust specific amounts of cash requested if the Subgrantor's records and subsequent verification with the Subgrantee indicate that the Subgrantee has an excessive amount of cash in its account.
- d) Income (including interest income) generated as a result of the receipt of WIA activities, will be utilized in accordance with policy and procedures established by the Subgrantor. Subgrantee will account for any such generated income separately.
- e) Subgrantee shall not be required to maintain a separate bank account but shall separately account for WIA funds on deposit. All funding under this subgrant agreement, will be made by check or wire transfer payable to the Subgrantee for deposit in Subgrantee's bank account or city and county governmental bank accounts. To provide for the necessary and proper internal controls, funds should be withdrawn and disbursed by no less than two representatives of the Subgrantee. The Subgrantor will have a lien upon any balance of WIA funds in these accounts, which will take priority over all other liens or claims.

## 10. Amendments

This subgrant agreement may be unilaterally modified by the Subgrantor under the following circumstances:

- a) There is an increase or decrease in federal or state funding levels.
- b) A modification to the Subgrant is required in order to implement an adjustment to a Subgrantee's plan.
- c) Funds awarded to the Subgrantee have not been expended in accordance with the schedule included in the approved Subgrantee's plan. After consultation with the Subgrantee, the Subgrantor has determined that funds will not be spent in a timely manner, and such funds are for that reason to the extent permitted by and in a manner consistent with state and federal law, regulations and policies, reverting to the Subgrantor.
- d) There is a change in state and federal law or regulation requiring a change in the provisions of this subgrant agreement..
- e) An amendment is required to change the Subgrantees' name as listed on this subgrant agreement. Upon receipt of legal documentation of the name change the state will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

Except as provided above, this subgrant agreement may be amended only in writing by the mutual agreement of both parties

## 11. Reporting

Subgrantee will compile and submit reports of activities, expenditures, status of cash and closeout information by the specified dates as prescribed by the Subgrantor. All expenditure reports must be submitted upon the accrual basis of accounting. Failure to adhere to the reporting requirements of this agreement will result in funds not being released.

## 12. Termination

This subgrant agreement may be terminated in whole or in part for either of the two following circumstances:

- a) Termination for Convenience - Either the Subgrantor or the Subgrantee may request a termination, in whole or in part, for convenience. The Subgrantee will give a ninety- (90) calendar-day advance notice in writing to the Subgrantor. The Subgrantor will give a ninety (90) calendar-day advance notice in writing to the Subgrantee.
- b) Termination for Cause - The Subgrantor may terminate this subgrant agreement in whole or in part when it has determined that the Subgrantee has substantially violated a specific provision of the WIA regulations or implementing state legislation and corrective action has not been taken.

(1) All notices of termination must be in writing and be delivered personally or by deposit in the U. S. Mail, postage prepaid, "Certified Mail-Return Receipt

Requested", and will be deemed to have been given at the time of personal delivery or of the date of postmark by the U. S. Postal Service.

**Notices to the Subgrantee will be addressed to:**


Notices to the Subgrantor will be addressed to:

Financial Management Unit  
Workforce Investment Division  
Employment Development Department  
P. O. Box 826880, MIC 69  
Sacramento, CA 94280-0001

13. Records

- a) If participants are served under this subgrant agreement, the Subgrantee will establish a participant data system as prescribed by the Subgrantor.
- b) Subgrantee will retain all records pertinent to this subgrant agreement for a period of three years from the date of final payment of this subgrant agreement. If, at the end of three years, there is litigation or an audit involving those records, the Subgrantee will retain the records until the resolution of such litigation or audit.
- c) The Subgrantor and/or the U. S. DOL, or their designee will have access to and right to examine, monitor and audit all records, documents, conditions and activities related to programs funded by this subgrant agreement. For purposes of this section, "access to" means that the Subgrantee shall at all times maintain within the State of California a complete set of records and documents related to programs funded by this agreement. The Subgrantee shall comply with this requirement regardless of whether it ceases to operate or maintain a presence within the State of California before the expiration of the subgrant. Subgrantee's performance under the terms and conditions herein specified will be subject to an evaluation by the Subgrantor of the adequacy of the services performed, timeliness of response and a general impression of the competency of the firm and its staff.

14. Audits

- a) The Subgrantee will maintain and make available to auditors, at all levels, accounting and program records including supporting source documentation and cooperate with all auditors. All governmental and non-profit organizations must follow the audit requirements (single audit or program-specific audit requirement) of OMB Circular A-133 (29 CFR 97.26 and 29 CFR 95.26).

- b) The Subgrantee and/or auditors performing monitoring or audits of the Subgrantee or its sub-contracting service providers will immediately report to the Subgrantor any incidents of fraud, abuse or other criminal activity in relation to this subgrant agreement, the WIA, or its regulations.

15. Disallowed Costs

Except to the extent that the state determines it will assume liability, the Subgrantee will be liable for and will repay, to the Subgrantor, any amounts expended under this subgrant agreement found not to be in accordance with WIA including, but not limited to, disallowed costs. Such repayment will be from funds (Non-Federal), other than those received under the WIA.

16. Conflicts

- a) Subgrantee will cooperate in the resolution of any conflict with the U. S. DOL that may occur from the activities funded under this agreement.
- b) In the event of a dispute between the Subgrantor and the Subgrantee over any part of this subgrant agreement, the dispute may be submitted to non-binding arbitration upon the consent of both the Subgrantor and the Subgrantee. An election for arbitration pursuant to this provision will not preclude either party from pursuing any remedy for relief otherwise available.

17. Grievances and Complaint System

Subgrantee will establish and maintain a grievance and complaint procedure in compliance with the WIA, federal regulations and state statutes, regulations and policy.

18. Property

All property, whether finished or unfinished documents, data, studies and reports prepared or purchased by the Subgrantee under this subgrant agreement, will be disposed of in accordance with the direction of the Subgrantor. In addition, any tools and/or equipment furnished to the Subgrantee by the Subgrantor and/or purchased by the Subgrantee with funds pursuant to this subgrant agreement will be limited to use within the activities outlined in this subgrant agreement and will remain the property of the United States Government and/or the Subgrantor. Upon termination of this subgrant agreement, Subgrantee will immediately return such tools and/or equipment to the Subgrantor or dispose of them in accordance with the direction of the Subgrantor.

19. Intellectual Property Provisions

a) Federal Funding

In any subgrant funded in whole or in part by the federal government, Subgrantor may acquire and maintain the Intellectual Property rights, title, and ownership, which result directly or indirectly from the subgrant, except as provided in 37 Code of Federal Regulations part 401.14. However, pursuant to 29 CFR section 97.34 the federal government shall have a royalty-free, non-exclusive, irrevocable, paid-up license throughout the world to use, duplicate, or dispose of such Intellectual

Property throughout the world in any manner for governmental purposes and to have and permit others to do so.

b) Ownership

(1) Except where Subgrantor has agreed in a signed writing to accept a license, Subgrantor shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all intellectual property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by Subgrantee or Subgrantor and which result directly or indirectly from this subgrant agreement.

(2) For the purposes of this subgrant agreement, Intellectual Property means recognized protectable rights and interest such as: patents, (whether or not issued) copyrights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will, any data or information maintained, collected or stored in the ordinary course of business by Subgrantor, and all other legal rights protecting intangible proprietary information as may exist now and/or hereafter come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.

(a) For the purposes of the definition of Intellectual Property, "works" means all literary works, writings and printed matter including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos, computer software and any other materials or products created, produced, conceptualized and fixed in a tangible medium of expression. It includes preliminary and final products and any materials and information developed for the purposes of producing those final products. "Works" does not include articles submitted to peer review or reference journals or independent research projects.

(3) In the performance of this subgrant agreement, Subgrantee may exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this subgrant agreement. In addition, under this subgrant agreement, Subgrantee may access and utilize certain of Subgrantor's intellectual property in existence prior to the effective date of this subgrant agreement. Except as otherwise set forth herein, Subgrantee shall not use any of Subgrantor's Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of Subgrantor. Except as otherwise set forth herein, neither the Subgrantee nor Subgrantor shall give any ownership interest in or rights to its Intellectual Property to the other Party. If, during the term of this subgrant



agreement, Subgrantee accesses any third-party Intellectual Property that is licensed to Subgrantor, Subgrantee agrees to abide by all license and confidentiality restrictions applicable to Subgrantor in the third-party's license agreement.

- (4) Subgrantee agrees to cooperate with Subgrantor in establishing or maintaining Subgrantor's exclusive rights in the Intellectual Property, and in assuring Subgrantor's sole rights against third parties with respect to the Intellectual Property. If the Subgrantee enters into any agreements or subcontracts with other parties in order to perform this subgrant agreement, Subgrantee shall require the terms of the agreement(s) to include all Intellectual Property provisions of paragraph nineteen a) through nineteen i). Such terms must include, but are not limited to, the subcontractor assigning and agreeing to assign to Subgrantor all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, subgrantee or subgrantor and which result directly or indirectly from this subgrant agreement or any subcontract.
- (5) Pursuant to paragraph nineteen (b) (4) of the Intellectual Property Provisions in Exhibit BB to this subgrant agreement, the requirement for the Subgrantee to include all Intellectual Property Provisions of paragraph nineteen a) through nineteen i) of the Intellectual Property Provisions in all agreements and subcontracts it enters into with other parties does not apply to subgrant agreements or subcontracts that are for customized and on-the-job training as authorized under 20 CFR 663.700-730.
- (6) Subgrantee further agrees to assist and cooperate with Subgrantor in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and enforce Subgrantor's Intellectual Property rights and interests.

c) Retained Rights / License Rights

- (1) Except for Intellectual Property made, conceived, derived from, or reduced to practice by Subgrantee or Subgrantor and which result directly or indirectly from this subgrant agreement, Subgrantee shall retain title to all of its Intellectual Property to the extent such Intellectual Property is in existence prior to the effective date of this subgrant agreement. Subgrantee hereby grants to Subgrantor, without additional compensation, a permanent, non-exclusive, royalty free, paid-up, worldwide, irrevocable, perpetual, non-terminable license to use, reproduce, manufacture, sell, offer to sell, import, export, modify, publicly and privately display/perform, distribute, and dispose of Subgrantee's Intellectual Property with the right to sublicense through multiple layers, for any purpose whatsoever, to the extent it is incorporated in the Intellectual Property resulting from this subgrant, unless Subgrantee assigns all rights, title and interest in the Intellectual Property as set forth herein.

(2) Nothing in this provision shall restrict, limit, or otherwise prevent Subgrantee from using any ideas, concepts, know-how, methodology or techniques related to its performance under this subgrant agreement, provided that Subgrantee's user does not infringe the patent, copyright, trademark rights, license or other Intellectual Property rights of Subgrantor or third party, or result in a breach or default of any provisions of paragraph nineteen a) through nineteen i) or result in a breach of any provisions of law relating to confidentiality.

d) Copyright

(1) Subgrantee agrees that for purposes of copyright law, all works (as defined in Ownership, paragraph nineteen (b) (2) (a) of authorship made by or on behalf of Subgrantee in connection with Subgrantee's performance of this subgrant agreement shall be deemed "works made for hire." Subgrantee further agrees that the work of each person utilized by Subgrantee in connection with the performance of this subgrant agreement will be a "work made for hire," whether that person is an employee of Subgrantee or that person has entered into an agreement with Subgrantee to perform the work. Subgrantee shall enter into a written agreement with any such person that: (i) all work performed for Subgrantee shall be deemed a "work made for hire" under the Copyright Act and (ii) that person shall assign all right, title, and interest to Subgrantor to any work product made, conceived, derived from or reduced to practice by Subgrantee or Subgrantor and which result directly or indirectly from this subgrant agreement.

(2) All materials, including, but not limited to, computer software, visual works or text, reproduced or distributed pursuant to this subgrant agreement that include Intellectual Property made, conceived, derived from, or reduced to practice by Subgrantee or Subgrantor and which result directly or indirectly from this subgrant agreement may not be reproduced or disseminated without prior written permission from Subgrantor.

e) Patent Rights

With respect to inventions made by Subgrantee in the performance of this subgrant agreement, which did not result from research and development specifically included in the Subgrant's scope of work, Subgrantee hereby grants to Subgrantor a license as described under paragraph nineteen c) for devices or material incorporating, or made through the use of such inventions. If such inventions result from research and development work specifically included within the subgrant agreement's scope of work, then Subgrantee agrees to assign to Subgrantor, without addition compensation, all its right, title and interest in and to such inventions and to assist Subgrantor in securing United States and foreign patents with respect thereto.

f) Third-Party Intellectual Property

Except as provided herein, Subgrantee agrees that its performance of this subgrant agreement shall not be dependent upon or include any Intellectual Property of Subgrantee or third party without first: (i) obtaining Subgrantor's prior written approval; and (ii) granting to or obtaining for Subgrantor's, without additional compensation, a license, as described in **paragraph nineteen c)**, for any of

Subgrantee's or third-party's Intellectual Property in existence prior to the effective date of this subgrant agreement. If such a license upon these terms is unattainable, and Subgrantor determines that the Intellectual Property should be included in or is required for Subgrantee's performance of this subgrant agreement, Subgrantee shall obtain a license under terms acceptable to Subgrantor.

g) Warranties

(1) Subgrantee represents and warrants that:

- (a) It has secured and will secure all rights and licenses necessary for its performance of this subgrant agreement.
- (b) Neither Subgrantee's performance of this subgrant agreement, nor the exercise by either Party of the rights granted in this subgrant agreement, nor any use, reproduction, manufacture, sale, offer to sell, import, export, modification, public and private display/performance, distribution, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Subgrantee or Subgrantor and which result directly or indirectly from this subgrant agreement will infringe upon or violate any Intellectual Property right, non-disclosure obligation, or other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any state, the United States, or any foreign country. There are currently no actual or threatened claims by any such third party based on an alleged violation of any such right by Subgrantee.
- (c) Neither Subgrantee's performance nor any part of its performance will violate the right of privacy of, or constitute a libel or slander against any person or entity.
- (d) It has secured and will secure all rights and licenses necessary for Intellectual Property including, but not limited to, consents, waivers or releases from all authors.
- (e) Of music or performances used, and talent (radio, television and motion picture talent), owners of any interest in and to real estate, sites locations, property or props that may be used or shown.
- (f) It has not granted and shall not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights granted to Subgrantor in this subgrant agreement.
- (g) It has appropriate systems and controls in place to ensure that state and federal funds will not be used in the performance of this subgrant agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
- (h) It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way Subgrantee's performance of this subgrant agreement.

(2) SUBGRANTOR MAKES NO WARRANTY, THAT THE INTELLECTUAL PROPERTY RESULTING FROM THIS SUBGRANT AGREEMENT DOES NOT INFRINGE UPON ANY PATENT, TRADEMARK, COPYRIGHT OR THE LIKE, NOW EXISTING OR SUBSEQUENTLY ISSUED.

h) Intellectual Property Indemnity

(1) Subgrantee shall indemnify, defend and hold harmless Subgrantor and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products, ("Indemnities") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim action, or proceeding, commenced or threatened) to which any of the Indemnities may be subject, whether or not Subgrantee is a party to any pending or threatened litigation, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of Subgrantee pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of Subgrantor's use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Subgrantee or Subgrantor and which result directly or indirectly from this subgrant agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that was issued after the effective date of this subgrant agreement. Subgrantor reserves the right to participate in and/or control, at Subgrantee's expense, any such infringement action brought against Subgrantor.

(2) Should any Intellectual Property licensed by the Subgrantee to Subgrantor under this subgrant agreement become the subject of an Intellectual Property infringement claim, Subgrantee will exercise its authority reasonably and in good faith to preserve Subgrantor's right to use the licensed Intellectual Property in accordance with this subgrant agreement at no expense to Subgrantor. Subgrantor shall have the right to monitor and appear through its own counsel (at Subgrantee's expense) in any such claim or action. In the defense or settlement of the claim, Subgrantee may obtain the right for Subgrantor to continue using the licensed Intellectual Property or, replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property becomes non-infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, Subgrantor may be entitled to a refund of all monies paid under this subgrant agreement, without restriction or limitation of any other rights and remedies available at law or in equity.

(3) Subgrantee agrees that damages alone would be inadequate to compensate Subgrantor for breach of any term of these Intellectual Property provisions of

paragraph nineteen a) through nineteen i) by Subgrantee. Subgrantee acknowledges Subgrantor would suffer irreparable harm in the event of such breach and agrees Subgrantor shall be entitled to obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.

i) Survival

The provisions set forth herein shall survive any termination or expiration of this subgrant agreement or any project schedule.

20. Confidentiality Requirements

The State of California and the Subgrantee will exchange various kinds of information pursuant to this subgrant agreement. That information will include data, applications, program files, and databases. These data and information are confidential when they define an individual or an employing unit. Confidential information requires special precautions to protect it from unauthorized use, access, disclosure, modification, and destruction. The sources of information may include, but are not limited to, the Employment Development Department, the California Department of Social Services, the California Department of Education, the California Department of Corrections, the County Welfare Department(s), the County IV-D Directors Office of Child Support, the Office of the District Attorney, the California Department of Mental Health, the California Office of Community Colleges and the Department of Alcohol and Drug Programs.

The Subgrantor and Subgrantee agree that:

- a) Each party shall keep all information that is exchanged between them in the strictest confidence and make such information available to their own employees only on a "need-to-know" basis.
- b) Each party shall provide security sufficient to ensure protection of confidential information from improper use and disclosures, including sufficient administrative, physical, and technical safeguards to protect this information from reasonable unanticipated threats to the security or confidentiality of the information.
- c) The Subgrantee agrees that information obtained under this subgrant agreement will not be reproduced, published, sold or released in original or in any other form for any purpose other than those specifically identified in this agreement.
  - i. Aggregate Summaries: All reports and/or publications developed by the Subgrantee based on data obtained under this agreement shall contain confidential data in aggregated or statistical summary form only. "Aggregated" refers to a data output that does not allow identification of an individual or employer unit.
  - ii. Publication: Prior to publication, Subgrantee shall carefully analyze aggregated data outputs to ensure the identity of individuals and/or employer units cannot be inferred pursuant to Unemployment Insurance Code section 1094(c). Personal identifiers must be removed. Geographic identifiers should be specified only in

large areas and as needed, and variables should be recorded in order to protect confidentiality.

- iii. Minimum Data Cell Size: The minimum data cell size or derivation thereof shall be three participants for any data table released to outside parties or to the public.
- d) Each party agrees that no disaggregate data, identifying individuals or employers, shall be released to outside parties or the the public.
- e) The Subgrantee shall notify Subgrantor's Information Security Office of any actual or attempted information security incidents, within 24 hours of initial detection, by telephone at (916) 654-6231. Information Security Incidents include, but are not limited to, any event (intentional or unintentional), that causes the loss, damage, or destruction, or unauthorized access, use, modification, or disclosure of information assets.

The Subgrantee shall cooperate with the Subgrantor in any investigation or security incidents. The system or device affected by an information security incident and containing confidential data obtained in the administration of this program shall be immediately removed from operation upon confidential data exposure or a known security breach. It shall remain removed from operation until correction and mitigation measures are applied.

If the Subgrantee learns of a breach in the security of the system which contains confidential data obtained under this Subgrant, then the Subgrantee must provide notification to individuals pursuant to Civil Code section 1798.82.

- f) The Subgrantee shall provide for the management and control of physical access to information assets (including personal computer systems, computer terminals, mobile computing devices, and various electronic storage media) used in performance of this Subgrant. This shall include, but is not limited to, security measures to physically protect data, systems, and workstations from unauthorized access and malicious activity; the prevention, detection, and suppression of fires; and the prevention, detection, and minimization of water damage.
- g) At no time will confidential data obtained pursuant to this agreement be placed on a mobile computing device, or on any form of removable electronic storage media of any kind unless the data are fully encrypted.
- h) Each party shall provide its employees with access to confidential information with written instructions fully disclosing and explaining the penalties for unauthorized use or disclosure of confidential information found in section 1798.55 of the Civil Code, section 502 of the Penal Code, section 2111 of the Unemployment Insurance Code, section 10850 of the Welfare and Institutions Code and other applicable local, state and federal laws.
- i) Each party shall (where it is appropriate) store and process information in electronic format, in such a way that unauthorized persons cannot reasonably retrieve the information by means of a computer.

- j) Each party shall promptly return to the other party confidential information when its use ends, or destroy the confidential information utilizing an approved method of destroying confidential information: shredding, burning, or certified or witnessed destruction. Magnetic media are to be degaussed or returned to the other party.
- k) If the Subgrantor or Subgrantee enters into an agreement with a third party to provide WIA services, the Subgrantor or Subgrantee agrees to include these data and security and confidentiality requirements in the agreement with that third party. In no event shall said information be disclosed to any individual outside of that third party's authorized staff, subcontractor(s), service providers, or employees.
- l) The Subgrantee may, in its operation of the One-Stops, permit a One-Stop Operator to enter into a subcontract to manage confidential information. This subcontract may allow an individual to register for resume-distribution services at the same time the individual enrolls in CalJOBS<sup>SM</sup>. Subgrantee shall ensure that all such subcontracts comply with the intellectual property requirements of paragraph 19 of this Subgrant, the confidentiality requirements of paragraph 20 of this Subgrant and any other terms of this Subgrant that may be applicable. In addition, the following requirements must be included in the subcontracts:
  - (1) All client information submitted over the Internet to the subcontractor's databases must be protected, at a minimum, by 128-bit Secure Socket Layer (SSL) encryption. Clients' social security numbers must be stored in a separate database within the subcontractor's network of servers, and protected by a firewall and a secondary database server firewall or AES<sup>1</sup> data encryption. If a subcontractor receives client social security numbers or other confidential information in the course of business, for example a resume-distribution service that provides enrollment in CalJOBS<sup>SM</sup>, social security numbers must be destroyed within two days after the client registers for CalJOBS<sup>SM</sup>. If a subcontractor obtains confidential information as an agent of the subgrantee, the subcontract must specifically state the purpose for the data collection and the term of records retention must be stated, and directly related, to the purpose and use of the information. In accordance with 29 Code of Federal Regulations 97.42, social security numbers and other client specific information shall not be retained for more than three years after a client completes services. The subgrantee should extend this period, only if any litigation, claim, negotiation, audit, or other action involving the records has been started before the end of the three-year retention period. In this case the records should be maintained until completion of the action and resolution of all issues arising from it, or until the close of the three-year retention period, whichever is later. (29 CFR sec. 97.42 (b)(2).)
  - (2) Client information (personal information that identifies a client such as name and social security number) and/or demographic information of a client (such as wage history, address, and previous employment) shall not be used as a basis for commercial solicitation during the time the client or agency is using the subcontractor's services. Client information and/or demographic information shall not be used for any purposes other than those specific program purposes set forth in the subcontract.

- (3) A One-Stop client must still be given the option to use the One-Stop's services, including CalJOBS<sup>SM</sup>, even if he or she chooses not to use any services of the subcontractor. This option shall be prominently, clearly and immediately communicated to the client upon registration within the One-Stop or for CalJOBS<sup>SM</sup>, the subcontractor's resume-distribution services, or any other services subcontractor offers to the client or the One-Stop Operator.
- (4) The subcontractor must clearly disclose all of its potential and intended uses of the client's personal and/or demographic information for the services the clients seeks and for any other services the subcontractor offers. The subcontractor shall not use a client's personal and/or demographic information without the client's prior permission. A link to the subcontractor's Privacy Policy shall appear prominently on the registration screens that list the potential and intended uses of the client's personal and/or demographic information.
- (5) When the Subgrantor modifies State automated systems such as the State CalJOBS<sup>SM</sup> System, it shall provide reasonable notice of such changes to the Subgrantee. The Subgrantee shall be responsible to communicate such changes to the One-Stop Operator(s) in the local area.
- m) Each party shall designate an employee who shall be responsible for overall security and confidentiality of its data and information systems and each party shall notify the other of any changes in that designation. As of this date, the following are those individuals:

FOR THE SUBGRANTOR

Name: Art O'Neal  
Title: Section Manager  
Address: P.O. Box 826880, MIC 69  
Sacramento, CA 94280-0001  
Telephone: (916) 654-9699  
Fax: (916) 654-9586

FOR THE SUBGRANTEE

Name:  
Title:  
Telephone:  
Fax:

21. Signatures

This subgrant agreement is of no force and effect until signed by both of the parties hereto. Subgrantee will not commence performance prior to the beginning of this subgrant agreement.