

**Agreement  
between the  
Monterey County Workforce Development Board (WDB)  
and  
Council of Adult and Experiential Learning for  
Provision of Regional Healthcare Sector Planning Services**

**I. DECLARATION**

This Agreement is entered into by and between the MONTEREY COUNTY WORKFORCE DEVELOPMENT BOARD, (hereinafter referred to as the WDB) and the Council of Adult and Experiential Learning, a 501(c)(3) nonprofit corporation, (hereinafter referred to as “Contractor”), collectively referred to as “the parties.”

The purpose of this Agreement is to formalize the working relationship and establish the roles and responsibilities of the WDB and Contractor for the provision of healthcare sector planning services for the Coastal Region (Santa Cruz, Monterey, San Luis Obispo and Santa Barbara counties).

The scope of services, and expected deliverables are specified in Exhibit A – Scope of Services and a budget summary and fee schedule are specified in Exhibit B, both of which are incorporated herein by reference.

**II. BACKGROUND**

The Monterey County WDB, a government entity created by federal statute (WIOA 2014), is charged with overseeing the allocation of WIOA funds and the WIOA-funded program operations of the America’s Job Center of California (AJCC) / One-Stop delivery system in Monterey County.

By entering into this Agreement, Contractor agrees to provide regional healthcare sector planning services for the Workforce Development Boards of Santa Cruz, Monterey, San Luis Obispo, and Santa Barbara counties, making up the Coastal Region.

**III. GENERAL AREA OF RESPONSIBILITY**

The areas of responsibility between the parties of this Agreement and the scope of services to be provided by Contractor are detailed in Exhibit A of this Agreement. Pursuant to Exhibit A, the parties expressly agree that Contractor is bound to comply with all the requirements of the WIOA as set forth in Exhibits A and C, and that the WDB shall oversee such activities.

This document and Exhibits A through C contain the entire Agreement of the parties and supersede all negotiations, verbal or otherwise and any other agreement or any established practice(s) between the parties hereto.

## **IV. GENERAL PROVISIONS**

### **A. TERM**

This Agreement shall commence effective **April 4, 2018** and remain in full force and effective through **May 30, 2018**, unless sooner terminated as provided herein. WDB may terminate this Agreement by giving thirty (30) calendar days written notice to Contractor, with or without cause. If WDB terminates this Agreement, WDB may proceed to direct available funding to another provider. This Agreement is contingent upon available funding. This Agreement will not automatically renew.

### **B. CONTRACT ADMINISTRATORS**

Contractor hereby designates Suzette Bennett, Operations Manager, of the Council of Adult and Experiential Learning as its Contract Administrator for this Agreement. All matters concerning this Agreement which are within the responsibility of Contractor shall be under the direction of, or shall be submitted to the Contractor's Contract Administrator.

WDB hereby designates the Executive Director of the WDB as its Contract Administrator for this Agreement. All matters concerning this Agreement which are within the responsibility of WDB shall be under the direction of, or shall be submitted to the WDB's Contract Administrator.

Either party may change its designated Contract Administrator upon giving notice pursuant to Section G - Notice.

### **C. FISCAL / REPORTING**

1. Funding available for the project term of **April 4, 2018** to **May 30, 2018** is \$75,000. The budget is detailed in the attached Exhibit B.
2. WDB shall serve as the fiscal agent for this Agreement and as such will bear primary responsibility for expenditure reporting to the State, processing of Contractor's reimbursements, and tracking of funds.
3. Subject to receipt of funds from the State, the WDB's fiscal office shall approve the reimbursement for services rendered as outlined in Exhibit B of this Agreement. WDB shall reimburse Contractor for allowable expenditures claimed within forty-five (45) calendar days after timely receipt of Contractor's properly completed and documented invoice for reimbursement, or as soon thereafter as is reasonable, provided Contractor is following the terms and conditions of this Agreement. Contractor may not assign any additional costs or fees to any participants or other funding sources outside those identified within this Agreement.
4. Contractor will provide services under this Agreement as set forth in the attached Scope of Services, Exhibit A.

#### **D. COMMUNICATION**

Contractor shall provide the specified services through processes established by the WDB and in compliance with applicable local, state, and federal regulations. Contractor shall provide all services to the WDB as specified in the attached Exhibit A. Meetings between Contractor and WDB shall be scheduled, as needed, to discuss Contractor performance and other issues that affect either party to this Agreement.

Contractor shall work cooperatively with the Workforce Development Boards and their staff in the Coastal Region as well as the Region's Slingshot Project Coordinator.

#### **E. INDEMNIFICATION**

Contractor shall indemnify, defend, and hold harmless the Monterey County WDB and Monterey County, their officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all 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, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the Contractor's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the Monterey County WDB or Monterey County. "Contractor's performance" includes Contractor's action or inaction and the action or inaction of Contractor's officers, employees, agents and subcontractors.

The indemnification obligation set forth above shall not expire with the termination of this Agreement. The indemnification obligation shall extend through to the end of the statute of limitations period applicable to claims arising out of this Agreement.

#### **F. INSURANCE**

**Evidence of Coverage:** Prior to commencement of this Agreement, the Contractor shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the Contractor upon request shall provide a certified copy of the policy or policies. This verification of coverage shall be sent to Monterey County's Contracts/Purchasing Department, unless otherwise directed. The Contractor shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and such, insurance has been approved by Monterey County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

**Qualifying Insurers:** All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Manager.

**Insurance Coverage Requirement:** Without limiting Contractor's duty to indemnify, Contractor shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$4,000,000 per occurrence

Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$2,000,000 per occurrence.

Workers' Compensation Insurance, if Contractor employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than statutory limits or \$2,000,000 each person, \$2,000,000 each accident and \$2,000,000 each disease

Professional liability insurance, **if required** for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$3,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the Contractor shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

**Other Insurance Requirements:** All insurance required by this Agreement shall be with a company acceptable to Monterey County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date Contractor completes its performance of services under this Agreement.

Each liability policy shall provide that the Monterey County WDB and Monterey County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements

Commercial general liability and automobile liability policies shall provide an endorsement naming the Monterey County WDB and the County of Monterey, their officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the Monterey County WDB or Monterey County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for **Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000)**. The required endorsement form for Automobile Additional Insured endorsement is **ISO Form CA 20 48 02 99**.

Prior to the execution of this Agreement by the Monterey County WDB, Contractor shall file certificates of insurance with Monterey County's contract administrator and Monterey County's Contracts/Purchasing Division, showing that the Contractor has in effect the insurance required by this Agreement. The Contractor shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

Contractor shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by the Monterey County WDB or Monterey County, annual certificates to Monterey County's Contract Administrator and Monterey County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, the Monterey County WDB or Monterey County shall notify Contractor and Contractor shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by Contractor to maintain such insurance is a default of this Agreement, which entitles the Monterey County WDB, at its sole discretion, to terminate this Agreement immediately.

## **G. NOTICE**

Notices provided pursuant to this Agreement shall be given personally, by email or by regular mail addressed to each of the following:

Sarah Miller  
Associate Vice President  
Workforce and Economic Development  
Council for Adult and Experiential Learning

55 E. Monroe Street, Suite 2710  
Chicago, IL 60603  
Phone (312) 499-2672  
[smiller@cael.org](mailto:smiller@cael.org)

Christopher Donnelly  
Executive Director  
Monterey County  
Workforce Development Board (WDB)

1441 Schilling Place, North  
Salinas, CA 93901  
Phone (831) 759-6644  
[donnellyc@co.monterey.ca.us](mailto:donnellyc@co.monterey.ca.us)

**H. CONSTRUCTION, INTERPRETATION AND INTEGRATION OF AGREEMENT**

WDB and Contractor agree that each party has fully participated in the review and drafting of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement. In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control. This Agreement shall be governed by and interpreted under the laws of the State of California and applicable federal law. Venue of litigation arising under this Agreement shall be in the Superior Court of California, Monterey County.

**I. NON-EXCLUSIVE AGREEMENT**

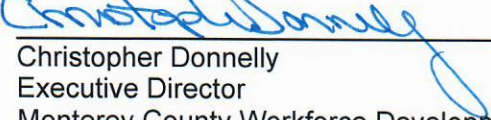
This Agreement is non-exclusive. The WDB expressly reserves the right to contract with other entities for provision of the same or similar services.

**J. EXHIBITS**

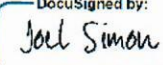
The following exhibits are attached hereto and incorporated by reference:

1. Exhibit A – Scope of Services
2. Exhibit B – Budget Summary and Fee Schedule
3. Exhibit C – WIOA Compliance, Certifications and Assurances

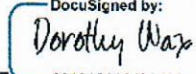
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first herein above written.

BY:   
 Christopher Donnelly  
 Executive Director  
 Monterey County Workforce Development Board

5/8/18  
 Date

BY:   
DocuSigned by:  
 Joel Simon  
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 JOEL SIMON  
 Executive Vice President  
 Council for Adult and Experiential Learning

3/22/2018  
 Date

BY:   
DocuSigned by:  
 Dorothy Wax  
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 Dorothy Wax  
 Vice President of Operations  
 Council for Adult and Experiential Learning

3/23/2018  
 Date

**EXHIBIT A**  
**SCOPE OF SERVICES**  
April 4, 2018 through May 30, 2018

- I. PROJECT OVERVIEW:** The purpose of this agreement is to formalize the working relationship and establish the roles and responsibilities of the Monterey County Workforce Development Board (WDB) and the Council for Adult and Experiential Learning (Contractor) for the provision of regional healthcare sector planning services. All references in this agreement to “County” include the WDB.
- II. PROJECT PERIOD:** April 4, 2018 through May 30, 2018.
- III. COORDINATION OF SERVICES AND DESIGNATED SERVICE AREAS:** Contractor shall carry out regional healthcare sector planning services for the coastal workforce development region, comprised of Santa Cruz, Monterey, San Luis Obispo, and Santa Barbara counties.

**IV. DUTIES AND RESPONSIBILITIES:**

**A. Contractor Responsibilities:**

**i. Coordination with WDB:**

Contractor shall coordinate and consult with the WDB.

**ii. Stakeholder Identification:**

Contractor will work with coastal area chambers of commerce, economic development authorities and will use available Labor Market tools (such as: EMSI, JobsEQ and the California Employment Development Department Labor Market Information Division) to identify additional healthcare employers, beyond those who have committed to the Slingshot Project, who are willing to participate in the coastal area health care planning effort.

**iii. Convening Healthcare Sector Partners:**

- 1) Contractor shall identify, convene and coordinate employers, educational institutions, service providers, and other relevant partners and stakeholders to develop a Healthcare sector partnership plan (HSPP) for the coastal region workforce development areas.
- 2) Contractor shall coordinate meetings and perform other support functions, as required, to successfully implement healthcare sector partnerships; and
- 3) Contractor will utilize productivity and modeling analytical tools.

**iv. HealthCare Sector Partnership Plan Development:**

- 1) Contractor shall develop a Project Management Plan to include schedules and deliverables for tasks, including timeframes for review with the WDB as well as outlines for deliverable documents, including data collection strategies, for review and approval from the WDB;
- 2) Contractor shall develop a Stakeholder Engagement Plan to identify key stakeholders from partner agencies, local governments, the business community, and healthcare employers to include in the HSPP process;
- 3) Contractor shall conduct a Coastal Region Healthcare Sector Analysis for the Coastal Region. This analysis will serve as the basis for the HSPP;

- 4) Contractor shall prepare and provide the WDB with a healthcare pre-apprentice and apprentice **program concept** for the coastal region.
- 5) Contractor shall prepare an Coastal Region HSPP, based on items 1-4 above to serve as the guiding document for workforce development activities in the healthcare sector in the coastal region

**B. WDB Role and Responsibilities:**

The Monterey County WDB, a government entity created by WIOA, is charged with overseeing the allocation of WIOA funds and the WIOA-funded program operations of the America's Job Center of California (AJCC) / One Stop delivery system in Monterey County. The WDB and the other coastal region WDBs shall:

- i. Provide Contractor with information and guidance on the current local and regional healthcare initiatives plans and priorities; and
- ii. Provide Contractor with labor market and healthcare industry sector and occupational information.

**C. Reporting:**

WDB will be responsible for reporting to the State and will field all requests from the Chief Elected Official—the Monterey County Board of Supervisors, WDB members, the media, Coastal Region WDB's, and other interested stakeholders. Contractor will be expected to respond to reporting requests made by the WDB in a prompt and timely manner.

**D. Evaluation of Contractor:**

Authorized federal, state and county representatives shall have the right to monitor, assess, or evaluate Contractor's performance pursuant to this agreement by any means including, but not limited to, inspections of premises, records, reports, audits, and interviews with Contractor, Contractor's employees and agents, and WIOA participants.

**E. Records and Audits of Contractor:**

- i. **Establishment and Maintenance of Records:** Contractor shall maintain records, including, but not limited to books, financial records, supporting documents, statistical records, personnel, property, and all other pertinent records sufficient to properly reflect:
  - 1) All direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this agreement; and
  - 2) All other matters covered by this agreement. Such records shall be maintained in accordance with requirements now or hereafter prescribed by the WDB.
- ii. **Preservation of Records:** Contractor shall preserve and make available its records for three (3) years from the date of final payment of this agreement. If at the end of the three (3) years, there is litigation or an audit involving those records, Contractor will retain records until the resolution of such litigation or audit.



**F. Branding:**

WIOA-funded programs will follow federal, state, and WDB branding guidelines. Contractor will not use its brand or promote its own organization without the explicit permission of the WDB. Contractor shall use WDB approved logo in any and all promotional, advertisement, and program related materials relative to the services under this agreement. All materials shall acknowledge the WDB and its role as the source of funding.

**G. Budget Modification:**

If Contractor requests, in writing, a change in Exhibit B – Budget Summary, the WDB's Executive Director or his or her designee, may authorize, in writing, adjustments of the dollar amount to cost categories or any line item, so long as the total amount of compensation under this agreement remains unchanged. A written request for a budget modification will not be required as long as Contractor is within 10% of the line item in question. Budget modifications or transfers of funds affecting performance benchmarks are prohibited.

**EXHIBIT B**

**BUDGET FEE STRUCTURE**  
March 7, 2018 through May 30, 2018

<b>Task</b>	<b>Description</b>	<b>Activity Summary</b>	<b>Hourly Rate</b>	<b>Estimated Costs</b>
1	Project Management	Project Management Plan and Stakeholder Engagement	\$175	\$3000
2	Sector Analysis	Quantitative LMI Analysis, Data Gathering, Focus Groups, Occupational Profiles, Data Synthesis	\$175	\$44,400
3	Sector Partnership Plan	Partnership Strategic Planning Facilitation Prep and Follow up, Web Conferences Prep and Facilitation, Plan Development and Revision, Compilation of Final HSPP	\$175	\$17,200
4	Pre-Apprenticeship and Apprenticeship Plan	Development of Regional Apprenticeship Concept	\$175	\$5200
5	Travel Expenses	Airfare, Accommodations & Incidentals for 2 Trips x 2 staff (estimated)	\$175	\$4800
	<b>Total Costs</b>			<b>\$74,600</b>

**NOTE:** All pricing is “firm fixed” for contract period and accounts for all costs, including all labor as well as any additional costs required to complete each task.

## EXHIBIT C

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### GENERAL CONDITIONS, ASSURANCES AND CERTIFICATIONS WORKFORCE INNOVATION AND OPPORTUNITY ACT (WIOA)

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The following applies to all programs and/or projects funded under the Workforce Innovation and Opportunity Act- (WIOA) conducted by the Council of Adult and Experiential Learning which is hereinafter referred to as "CONTRACTOR".

#### 1. COMPLIANCE

In performance of this Agreement, CONTRACTOR will fully comply with:

- a. The provisions of the Workforce Innovation and Opportunity Act (WIOA) of 2014; the Office of Management and Budget (OMB) Uniform Administrative Requirements, Allowable Costs, Cost Principles, and Audit Requirements for Federal Awards, Final Rule at 2 Code of Federal Regulations (CFR), Chapter I and Chapter II, Part 200, et al (hereafter referred to as Uniform Guidance 2 CFR Part 200); and the Department of Labor's (DOL) exceptions at 2 CFR Chapter II, Part 2900, et al. (hereafter referred to as DOL Exceptions 2 CFR Part 2900); 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 WIOA.
- c. The provisions of Public Law 107-288, Jobs for Veterans Act, as the law applies to DOL job training programs.
- d. CONTRACTOR will ensure diligence in managing programs under this Agreement, including performing appropriate monitoring of its activities and taking prompt corrective action against known violations of the WIOA. CONTRACTOR agrees to conform to the provisions of the WIOA and the contract requirements as referenced in Uniform Guidance 2 CFR Part 200, Appendix II and DOL Exceptions 2 CFR Part 2900, Appendix II to Part 200.

#### 2. CERTIFICATIONS / ASSURANCES

Except as otherwise indicated, the following certifications apply to all CONTRACTORS.

- a. **Corporate Registration:** CONTRACTOR, if it is a corporation, certifies it is registered with the Secretary of State of the State of California.
- b. **American's Disabilities Act (ADA):** CONTRACTOR agrees to comply with the American's Disabilities Act (ADA) of 1990, which, prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C.12101 et seq.)
- c. **False Claims Act:** CONTRACTOR, by signing this Agreement, agrees to assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets. CONTRACTOR shall assure that all annual, final fiscal reports, monthly claims, invoices, and vouchers, it submits for the purpose of requesting payment will include a certification, signed by an official who is authorized to legally bind CONTRACTOR, which reads as follows: "By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise." (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).
- d. **Authority to Bind CONTRACTOR:** CONTRACTOR shall furnish the WDB in writing, a list of persons authorized to execute on behalf of CONTRACTOR: Agreements, modifications to Agreements, invoices or other documents as may be required by the WDB.

- e. **Sectarian Activities:** CONTRACTOR certifies that this 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.
- f. **National Labor Relations Board:** CONTRACTOR (if not a public entity), by signing this Agreement, does swear under penalty of perjury, that no more than one final unappealable finding of contempt of court by a Federal court has been issued against CONTRACTOR within the immediately preceding two-year period because of CONTRACTOR's failure to comply with an order of a Federal court, which orders CONTRACTOR to comply with an order of the National Labor Relations Board (PCC10296).
- g. **Prior Findings:** CONTRACTOR, by signing this Agreement, does swear under penalty of perjury, that it has not failed to satisfy any major condition in a current or previous 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.
- h. **Drug-Free Workplace Certification:** By signing this Agreement, CONTRACTOR hereby certifies under penalty of perjury under the laws of the State of California that CONTRACTOR 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 to inform employees about:
    - a. The dangers of drug abuse in the workplace;
    - b. The person's or organization's policy of maintaining a drug-free workplace;
    - c. Any available counseling, rehabilitation and employee assistance programs; and
    - d. Penalties that may be imposed upon employees for drug abuse violations.
  - (3) Every CONTRACTOR employee who works on this Agreement will:
    - a. Receive a copy of the CONTRACTOR's drug-free policy statement; and
    - b. Agree to abide by the terms of the CONTRACTOR's drug-free policy statement as a condition of employment on the Agreement.
- i. **Child Support Compliance Act:** In accordance with the Child Support Compliance Act, CONTRACTOR recognizes and acknowledges: The importance of child and family support obligations and shall fully comply with the 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 CONTRACTOR is fully complying with the earnings assignment orders of all CONTRACTOR's employees and is providing the names of all new CONTRACTOR's employees to the New Employee Registry maintained by the State of California Employment Development Department (EDD).
- j. **Debarment and Suspension Certification:** By signing this Agreement, CONTRACTOR hereby certifies under penalty of perjury under the laws of the State of California that CONTRACTOR will comply with regulations implementing Executive Order 12549, Debarment and Suspension, Uniform Guidance 2 CFR Part 200, Appendix I, and that CONTRACTOR, to the best of its knowledge and belief, certifies that it and its principals:
  - (1) Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency.
  - (2) Have not, within a three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against it 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. Nor shall CONTRACTOR

have, within a three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against it for 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 Debarment and Suspension Certification.
- (4) Have not, within a three-year period preceding this Agreement, had one or more public transactions (Federal, State or local) terminated for cause or default. Where CONTRACTOR is unable to certify to any of the statements in this Debarment and Suspension Certification, it shall attach an explanation to this Agreement.

k. **Mandatory Disclosures:** All WIOA and Wagner-Peyser recipients of Federal awards must disclose, as required at 2 CFR 200.113, in a timely manner, in writing to the Federal awarding agency or the WDB, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in 2 CFR 200.338 (Remedies for noncompliance), including suspension or debarment.

l. **Lobbying Certification:** By signing this AGREEMENT CONTRACTOR hereby assures and certifies to compliance with the lobbying restrictions which are codified in the DOL regulations at Uniform Guidance 2 CFR Part 200 and DOL Exceptions 2 CFR 2900, as follows:

- (1) No Federal appropriated funds have been paid, by or on behalf of CONTRACTOR, to any person for influencing or attempting to influence an officer or employee of any 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 Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- (3) CONTRACTOR shall require that the language of the lobbying restrictions be included in the award documents for Agreement transactions over \$100,000 (per OMB) at all tiers (including 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.

m. **Priority Hiring Considerations:** If this AGREEMENT includes services in excess of \$200,000, CONTRACTOR shall give priority consideration in filling vacancies in positions funded by the Agreement to qualified recipients of aid under Welfare and Institutions Section Code 11200 in accordance with Public Contract Code §10353.

n. **Sweatfree Code of Conduct:** All CONTRACTORS that contract 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. CONTRACTOR further declares under penalty of perjury that it will 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. CONTRACTOR agrees to cooperate fully in providing reasonable access to CONTRACTOR's records, documents, agents or employees, or premises if reasonably required by authorized officials of the WDB, State of California EDD, the Department of Industrial Relations, or the Department of Justice to determine CONTRACTOR's compliance with the requirements of the Sweatfree Code of Conduct.

- o. Unenforceable Provision:** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected hereby.

**p. Non-discrimination Clause / Affirmative Action / Equal Employment Opportunity:**

- (1) The conduct of the parties to this Agreement will be in accordance with Title VI of the Civil Rights Act of 1964, and the Rules and Regulations promulgated hereunder and the provisions of WIOA Section 188 and 29 CFR Part 38.

  - a. As a condition to the Agreement of financial assistance from the DOL under WIOA, CONTRACTOR assures that it has the ability to comply with the nondiscrimination and equal opportunity provisions of the following laws and will remain in compliance for the duration of the Agreement:

    - i. Section 188 of the WIOA, which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, political affiliation or belief, or against beneficiaries on the basis of either citizenship/status or participation in any WIOA financially assisted Title I program or activity;
    - ii. Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, and national origin;
    - iii. Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;
    - iv. The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and
    - v. Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.
  - b. CONTRACTOR also assures that, as a recipient of WIOA Title I financial assistance, it will comply with 29 CFR Part 38 and all other regulations implementing the laws listed above. This assurance applies to CONTRACTOR's operation of the WIOA financially assisted program or activity, and to all Agreements that CONTRACTOR makes to carry out the WIOA financially assisted program or activity. CONTRACTOR understands that the United States has the right to seek judicial enforcement of this assurance.
  - c. This CONTRACTOR shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.
  - d. These assurances are binding on Contractor for the term of this Agreement, as specified in 29 CFR section 38.26(b).
- (2) CONTRACTOR will take affirmative action to assure that no individual will be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration or in

connection with any services or activities authorized under the WIOA in violation of any applicable nondiscrimination law, including laws prohibiting discrimination on the basis of age, race, sex, color, religion, national origin, disability, political affiliation or belief. All complaints alleging discrimination must be filed and processed according to the procedures in the applicable DOL nondiscrimination regulations.

- (3) CONTRACTOR will assure that discriminatory job orders will not be accepted, except where the stated requirement is a bona fide occupational qualification (BFOQ). See, generally, 42 U.S.C. 2000(e)–2(e), 29 CFR parts 1604, 1606, 1625. (3)
- (4) CONTRACTOR will assure that employment testing programs will comply with 41 CFR part 60–3 and 29 CFR part 32 and 29 CFR 1627.3(b)(iv).
- (5) CONTRACTOR agrees to conform to non-discrimination and equal opportunity requirements and procedures, including the WDB's nondiscrimination and equal opportunity complaint procedures in compliance with the WIOA, 29 CFR Part 38, Federal regulations and State statutes, regulations and policy. (Reference WDB Policy 2018-01 – Nondiscrimination and Equal Opportunity Procedures and policy attachments; <http://www.montereycountywib.org/policies/policies/>)
- (6) CONTRACTOR will be governed by WIOA procedures relating to complaints alleging violations of the WIOA, regulations, other Agreements under the WIOA including terms and conditions of employment. Participants will be notified in writing, upon enrollment into employment or training, of the WIOA complaint procedures including notification of their right to file a complaint and instructions on how to do so. Complaint procedures include: (1) the right to file a complaint, (2) the opportunity to resolve complaints informally, (3) written notice of hearings, and (4) a final decision within sixty (60) days of the date of filing.
- (7) CONTRACTOR will comply with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, DOL."
- (8) CONTRACTOR shall ensure equal employment opportunity based on objective personnel policies and practices for recruitment, selection, promotion, classification, compensation, performance evaluation, and employee management relations.

**q. Indemnification:**

The following provision applies only if CONTRACTOR is a governmental entity: Pursuant to 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.

- r. **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 heading "Employment and Training" that are available for expenditure on or after June 15, 2006, including funds expended pursuant to this Agreement, 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 CONTRACTORS providing goods and services as defined in Uniform Guidance 2 CFR Part 200 and the DOL Exceptions 2 CFR Part 2900. 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 DOL Employment and Training Administration programs. See Training and Employment Guidance Letter #05-06 for further clarification at [http://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=2262](http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2262).

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

- s. **Federal Funding Accountability and Transparency Act (FFATA):** As required by FFATA, recipients of Federal awards are required to report sub-award and executive compensation information. By signing this Agreement, CONTRACTOR hereby assures and certifies to comply with the provisions of FFATA, which includes requirements referenced in Uniform Guidance 2 CFR Part 200 and DOL Exceptions 2 CFR Part 2900.
- t. **Air or Water Pollution Violation:** Under State laws, CONTRACTOR shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to any cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of Federal law relating to air or water pollution.
- u. **Clean Air Act and Federal Water Pollution Control Act:** All Agreements between the WDB and CONTRACTOR of Agreements in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

### 3. STANDARDS OF CONDUCT

CONTRACTOR hereby assures that in administering this Agreement, it shall comply with the standards of conduct hereinafter set out, for maintaining the integrity of the Agreement and avoiding any conflict of interest in its administration.

- a. **General Assurance:** Every reasonable course of action will be taken by CONTRACTOR in order to maintain the integrity of the expenditure of public funds and to avoid favoritism and questionable or improper conduct. This Agreement will be administered in an impartial manner, free from efforts to gain personal, financial, or political gain. CONTRACTOR agrees to conform to the non-discrimination requirements as referenced in WIOA Section 188.
- b. **Conflict of Interest:** An executive or employee of CONTRACTOR, an elected official in the area or a member of the WDB will not solicit or accept money or any other consideration from a third person, for the performance of an act reimbursed, in whole or in part, by CONTRACTOR or the WDB: supplies, materials, equipment or services purchased with Agreement funds will be used solely for purposes allowed under this Agreement. No member of CONTRACTOR or the WDB 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. For the purpose of this Agreement, a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein has a financial interest in or a tangible personal benefit from a firm considered for a contract, subcontract, or Agreement. (Reference 2 CFR Part 200.318(c)(1)(2) – Conflict of Interest) If a non-Federal entity, has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest mean that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears unable to be impartial in conducting a procurement action involving a related organization. (Reference 2 CFR Part 200.318(c)(2))
- c. **Buy-American:** CONTRACTOR agrees that, as stated in sec. 502 of WIOA, all funds authorized in WIOA and the Wagner- Peyser Act must be expended on only American made equipment and products, as required by the Buy American Act (41 U.S.C. 8301–8305).



- d. **Nepotism:** CONTRACTOR certifies that it shall not hire nor permit the hiring of any person in a position funded under this Agreement if a member of the person's immediate family is employed in an administrative capacity. For the purpose of this Agreement, the term "immediate family" means spouse (common law or otherwise), child, mother, father, brother, sister, brother/sister-in-law, son/daughter-in-law, mother/father-in-law, aunt, uncle, niece, nephew, step-parent, step-child, or such other relationship which would give rise to a substantial appearance of impropriety if the person were to be hired by CONTRACTOR. The term "administrative capacity" means persons who have overall administrative responsibility for a program, including but not limited to, selection, hiring, or supervisory responsibilities.
- e. **Procurement:** CONTRACTOR must comply with the WDB procurement policy and procedures which reflect applicable local, State and Federal laws and regulations, and the standards identified in Uniform Guidance 2 CFR Part 200.318 – General Procurement Standards. (Reference WDB Policy 2013-01 – Procurement Standards and policy attachments; <http://www.montereycountywib.org/policies/policies/>)

#### 4. COORDINATION

- a. CONTRACTOR will, to the maximum extent feasible, coordinate all programs and activities supported under this part with other core programs under the WIOA, including the WIOA (Adult, Dislocated Worker and Youth formula programs); Wagner-Peyser Act employment services; Adult Education and Literacy Act programs; Rehabilitation Act Title I programs; Job Corps program, YouthBuild program, Native American programs, Migrant and Seasonal Farmworker programs, and other employment and training programs at the local level. In addition to the core programs, for individuals with multiple needs to access services, CONTRACTOR will, to the maximum extent feasible, coordinate with the following partner programs required to provide access through the America's Job Center of California or One-Stop Career Center: Career and Technical Education (Perkins), Community Development Block Grants, Indian and Native American programs, HUD Employment and Training programs, Local Veterans' Employment Representatives and Disabled Veterans' Outreach program, National Farmworker Jobs program, Senior Community Service Employment program, Temporary Assistance for Needy Families (TANF), Trade Adjustment Assistance programs, and Unemployment Compensation programs.
- b. CONTRACTOR shall not accept referrals for participant positions funded under this Agreement from any agency which charges a fee to either the individual being referred or the employing agency for the services rendered. Charges incurred in violation of this clause shall be the sole responsibility of CONTRACTOR, and shall not be charged to either this AGREEMENT or the participant under this Agreement.

#### 5. SUBCONTRACTING

- a. CONTRACTOR will not assign a contract resulting from this Agreement or any portion thereof to a third party without the prior written consent of the WDB, and any attempted assignment or subcontract without such prior written consent may cause immediate termination of the Agreement.
- b. Upon approval from the WDB, any of the work or services specified in this AGREEMENT which will be performed by other than CONTRACTOR will be evidenced by a written Agreement specifying the terms and conditions of such performance.
- c. CONTRACTOR 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.
- d. The system for awarding contracts will contain safeguards to insure CONTRACTOR does not contract with any entity whose officers have been convicted of fraud or misappropriation of funds within the last two years.

#### 6. RESOLUTION

A county, city, district or other local public body must provide the WDB and 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 Agreement. Preferably resolutions should authorize a designated position rather than a named individual.

## **7. FUNDING**

- a. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional and legislative appropriation of funds. The parties hereby enter into this Agreement in advance of confirmation of the availability of funds for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the AGREEMENT was executed after that determination was made.
- b. This 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 Agreement for the purposes of this program and; (2) sufficient funds are made available to the State by the United States Government for the fiscal years covered by this AGREEMENT for the purposes of the programs described in the scope of services. In addition, this 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 AGREEMENT in any manner.
- c. At the expiration of the terms of this Agreement or upon termination prior to the expiration of this Agreement, funds not obligated for the purpose of this Agreement will be immediately remitted to the WDB, and shall no longer be available to CONTRACTOR.
- d. The WDB 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 CONTRACTOR is given prompt notice and the opportunity for an informal review of the WDB's decision. The Executive Director of the WDB or his/her 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 CONTRACTOR to comply with the provisions of this Agreement, or with the WIOA or regulations, when such failure involves fraud or misappropriation of funds, may result in immediate withholding of funds.

## **8. FISCAL ACCOUNTABILITY**

- a. CONTRACTOR shall establish and maintain a sound financial management system, based upon generally accepted accounting principles. An integral part of the required financial management system is a system of internal accounting controls that will provide reasonable assurance that WIOA assets are safeguarded against loss from unauthorized use or disposition, and that accounting transactions affecting WIOA fund accountability are properly charged and recorded by administrative and program cost categories to permit the preparation of accurate and supportable financial reports.
- b. CONTRACTOR will comply with controls, record keeping and fund accounting procedure requirements of WIOA, Federal and State regulations, and directives to ensure the proper accounting for program funds paid to CONTRACTOR by the WDB through a cost reimbursement process.
- c. This Agreement provides for the reimbursement of allowable costs that are identified and approved in the AGREEMENT budget, and incurred in the operation of the programs specified in the scope of services. Back-up documentation is required from CONTRACTOR to justify reimbursement payments made under this AGREEMENT.
- d. All expenditures must be reported on an accrual basis of accounting.
- e. No cost shall be allowed under this AGREEMENT which is not specifically identified in CONTRACTOR's approved budget. CONTRACTOR shall not transfer funds between cost categories or adjust designated "total budget" line items without prior written approval by the WDB (applicable to cost reimbursement contracts only). Invoices for reimbursement submitted by CONTRACTOR that include designated total line item expenditures above the total budget for that designated line item will not be paid until the cost overrun is reconciled. All limitations on expenditures specified in Federal and State fiscal requirements shall apply to this AGREEMENT.

- f. CONTRACTOR shall not charge nor receive compensation under this AGREEMENT for any services or expenses unless said services or expenses are directly and exclusively related to the purpose of this AGREEMENT. In addition, payment may not be received by CONTRACTOR from any other source for said services or expenses. Moreover, funds shall not be allowed for cost incurred before or after the effective dates of this AGREEMENT. CONTRACTOR shall not use WIOA funds as security or payment for obligations or as loans for activities of other funded programs.
- g. CONTRACTOR'S personnel whose time is charged to the budget under this AGREEMENT shall be paid on a pro-rata basis commensurate with the percentage of time devoted to the programs specified in the scope of services. Personnel costs including salary shall be reasonable. Employees of CONTRACTOR shall be compensated using WIOA funds under this AGREEMENT only for work performed under the terms of this AGREEMENT.
- h. The WDB shall not pay, and CONTRACTOR shall not request, payment for any accrued employee fringe benefits (including vacation and sick time), which were not accrued by CONTRACTOR's employees during the term of this AGREEMENT.
- i. In accordance with the requirements at 2 CFR 200.400(g), CONTRACTOR may not earn or keep any profit resulting from WIOA funds paid under this AGREEMENT, or other federal financial assistance.
- j. Any excess of revenue over costs incurred for services provided by CONTRACTOR must be included in program income. (WIOA secs. 194(7)(A)–(B)). Interest income earned on funds received under WIOA and Wagner-Peyser Act must be included in program income. (WIOA sec.194(7)(B)(iii)) Accordingly, these funds may be retained by CONTRACTOR to underwrite additional training or training related services pursuant to the project or program that generated them, consistent with the purposes of WIOA. When CONTRACTOR ultimately discontinues the provision of all WIOA training and/or services described in this AGREEMENT, program income remaining shall be returned to the WDB.
- k. CONTRACTOR shall make available to the WDB, upon request, a complete and detailed record or cost allocation of any expenses that are, in whole or in part, supported with program funds. This detailed account shall include percentages and total contributions from both WIOA and non-WIOA sources. Shared expenses may include, but are not necessarily limited to the following: staff salaries, facilities, equipment, etc.
- l. Travel expenses when permitted should be made at the agency rate per mile, but the rate cannot exceed the Agreement allowed by the Monterey County travel expense reimbursement policy, located online at: [http://www.co.monterey.ca.us/auditor/pdfs/county\\_travel\\_business\\_expense\\_policy\\_12-5-12.pdf](http://www.co.monterey.ca.us/auditor/pdfs/county_travel_business_expense_policy_12-5-12.pdf)

## **9. PAYMENT OF AUTHORIZED EXPENDITURES**

- a. Subject to receipt of funds from the State, the WDB agrees to reimburse CONTRACTOR for expenditures authorized in the AGREEMENT budget. Financial reports and invoices are due to the fiscal unit of the WDB by the 15th working day of each month and shall include all obligations, expenditures and accruals incurred during the previous month, unless otherwise specified by the WDB. Late submission of financial reports and invoices are subject to withholding of payment due to non-compliance with CONTRACTOR'S AGREEMENT to submit timely and accurate reports and invoices. The WDB's Fiscal Unit shall pay the certified invoice within 45 days of receiving the certified invoice. Financial information reported on claims must be directly linked to records maintained by CONTRACTOR which support actual delivery of services as outlined in the existing AGREEMENT between CONTRACTOR and the WDB. The WDB shall be the sole judge of what constitutes adequate supporting documentation.
- b. CONTRACTOR shall be paid in accordance with the AGREEMENT and budget, not to exceed the maximum Agreement specified. Any cost incurred by CONTRACTOR over and above the maximum Agreement obligated by the AGREEMENT and budget shall be at the sole risk and expense of CONTRACTOR.

## **10. PERFORMANCE ACCOUNTABILITY**

- a. CONTRACTOR, commencing as of the date of execution of this AGREEMENT by both parties, shall perform all the functions set forth in the AGREEMENT scope of services. Adequate performance under this AGREEMENT is essential and CONTRACTOR shall measure its performance results against goals and performance standards provided by this AGREEMENT. Measured performance below goals standards will constitute noncompliance with the terms of this AGREEMENT.
- b. It is the responsibility of CONTRACTOR to bring to the attention of the WDB areas of performance which are below goals and standards and, with respect to each such area, prepare a corrective action plan or a statement justifying modification of operational plans. In addition, upon receipt of any monitoring report or other communication identifying areas of concern, a corrective action plan must be submitted to the WDB within the time frame identified in the report. A corrective action plan shall consist of the following:
  - (1) Specific Actions to be taken
  - (2) The objective of each action
  - (3) Completion dates
  - (4) Person(s) responsible
  - (5) Result(s) to be accomplished
- c. CONTRACTOR shall submit all corrective plans to the WDB for written approval. If approved, CONTRACTOR shall keep the WDB aware of progress, on a continuing basis, until the corrective action plan results are accomplished. The WDB reserves the right to require modifications to the corrective action plan, satisfactory to the WDB, in the event of failure by CONTRACTOR to achieve the specified results.
- d. Failure of CONTRACTOR to satisfy administrative standards and/or performance goals may result in the immediate reduction of service levels to new applicants and/or enrollees by WDB. Such reduction will be accompanied by a proportionate decrease in obligated AGREEMENT funds.

## **11. MAINTENANCE OF EFFORT**

CONTRACTOR shall comply with the following maintenance of effort requirements:

- a. CONTRACTOR warrants that participant positions funded through this AGREEMENT are in addition to those that would otherwise be financed by CONTRACTOR without assistance under WIOA.
- b. Participant positions funded through this AGREEMENT shall: (1) result in an increase in employment opportunities over those that would otherwise be available; (2) not result in the displacement of currently employed workers, including partial displacement such as a reduction in hours of non-over time work, wages or employment benefits; (3) not impair existing contracts for service or result in a substitution of Federal funds for other funds in connection with work that would otherwise be performed; (4) not substitute public service and/or work experience positions for existing jobs.
- c. CONTRACTOR will not terminate, layoff or reduce the working hours of an employee for the purpose of hiring an individual with funds available under WIOA.
- d. CONTRACTOR will not hire any person using funds available under WIOA when any other person is on layoff for the same or substantially equivalent job.

## **12. AMENDMENTS**

This AGREEMENT may be unilaterally modified by the WDB, under the following circumstances:

- a. There is a decrease in Federal or State funding levels.

- b. Funds awarded to CONTRACTOR have not been expended in accordance with the budget included in the approved CONTRACTOR'S plan. This will occur if, after consultation with CONTRACTOR, the WDB has determined, in a manner consistent with State and Federal law, regulations and policies, that funds will not be spent in a timely manner.
- c. There is a change in State and Federal law or regulation requiring a change in the provisions of this AGREEMENT.

Except as provided above, the AGREEMENT may be amended only in writing by the mutual AGREEMENT of both parties.

### 13. REPORTING

- a. CONTRACTOR will compile and submit reports of activities, performance and expenditures by the specified dates prescribed by the WDB. 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 paid to CONTRACTOR by the WDB.
- b. CONTRACTOR shall submit to the WDB all required reports on a timely basis as delineated by the WDB. CONTRACTOR shall submit written monthly status reports covering such items as progress of work being performed, milestones attained, resources expended, problems encountered and corrective action taken or other reports determined to be necessary by the WDB. These reports are due to the WDB, as requested in writing. CONTRACTOR also shall submit on a timely basis all required AGREEMENT supplemental documents.

### 14. TERMINATION

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

- a. **Termination for Convenience:** Either the WDB or CONTRACTOR may request a termination, in whole or in part, for convenience. CONTRACTOR will give a thirty (30) calendar day advance notice in writing to the WDB. The WDB will give a thirty (30) calendar day advance notice in writing to CONTRACTOR.
- b. **Termination for Cause:** The WDB may terminate this AGREEMENT, in whole or in part, when it has determined that CONTRACTOR has substantially violated a specific provision of the WIOA regulations, the Uniform Guidance, or implementing State legislation and corrective action has not been taken.

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 WDB will be addressed to:  
Executive Director  
Workforce Development Board (WDB)  
1441 Schilling Place, North  
Salinas, CA 93901

Notices to CONTRACTOR will be addressed to:

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## **15. RECORDS MAINTENANCE & RETENTION**

- a. If participants are served under this AGREEMENT, CONTRACTOR will use CalJOBS <https://www.caljobs.ca.gov>, online case management systems as prescribed by the County of Monterey.
- b. CONTRACTOR will retain all records pertinent to this AGREEMENT for a period of three (3) years from the date of final payment of this AGREEMENT. If, at the end of three (3) years, there is litigation or an audit involving those records, CONTRACTOR will retain the records until the resolution of such litigation or audit. (Refer to Uniform Guidance, Subpart D, Part 200.333-200.337.)
- c. The WDB, the State of California, and/or the U.S. DOL, or their designee (refer to Uniform Guidance, Subpart F, Part 200.500-200.521) will have access to and right to examine, monitor and audit all records, documents, conditions and activities related to programs funded by this AGREEMENT. For purposes of this section, "access to" means that CONTRACTOR shall at all times maintain within the State of California a complete set of records and documents related to programs funded by this AGREEMENT. CONTRACTOR 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 AGREEMENT. CONTRACTOR'S performance under the terms and conditions herein specified will be subject to an evaluation by the WDB of the adequacy of the services performed, timeliness of response and a general impression of the competency of CONTRACTOR'S organization and its staff.
- d. Portable Document Format (PDF), electronic, machine readable information or paper documentation is allowed for the purpose of records maintenance and retention, as long as there are appropriate and reasonable internal controls in place to safeguard against any inappropriate alteration of records. (Reference Uniform Guidance 2 CFR 200.335 – Methods for Collection, Transmission and Storage of Information) To the extent possible, CONTRACTORS should use the Virtual Job Center and/or CalJOBS systems as prescribed by the WDB, as both a reporting and a case management tool.

## **16. AUDITS**

- a. A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted in accordance with 2 CFR Part 200.514.
- b. CONTRACTOR will maintain and make available to auditors, at all levels, accounting and program records including supporting source documentation and cooperate with all auditors. CONTRACTOR must follow the audit requirements (single audit or program-specific audit requirement) of Uniform Guidance 2 CFR, Part 200 and DOL Exceptions 2 CFR Part 2900.
- c. Auditors performing monitoring or audits of CONTRACTOR will immediately report to the WDB any incidents of fraud, abuse or other criminal activity in relation to this AGREEMENT, the WIOA or its regulations.

## **17. DISALLOWED COSTS**

- a. Except to the extent that the State determines it will assume liability, CONTRACTOR will be liable for and will repay the WDB, any sums expended under this AGREEMENT found not to be in compliance with the WIOA including, but not limited to, disallowed costs. Such repayment will be from funds (Non-Federal), other than those received under the WIOA. Payment of any disallowed costs must be made within 30 days of notification of the disallowed costs, unless otherwise specified by the WDB.
- b. CONTRACTOR shall be notified of all final determinations made by the WDB regarding audit reports, independent monitoring reports, and WDB administrative findings by a final determination letter.
- c. If CONTRACTOR fails to refund any disallowed cost within 30 days, the WDB may, at its sole discretion, terminate any and all AGREEMENTs with CONTRACTOR effective immediately thereon.

## **18. CONFLICTS**

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

## **19. PROPERTY**

- a. All property, whether finished or unfinished documents, data, studies and reports prepared or purchased by CONTRACTOR under this AGREEMENT, will be disposed of in accordance with the direction of the WDB. In addition, any tools and/or equipment furnished to CONTRACTOR by the WDB and/or purchased by CONTRACTOR with funds pursuant to this AGREEMENT, will be limited to the use within the activities outlined in this AGREEMENT and will remain the property of the DOL and/or the WDB. Upon termination of this AGREEMENT, CONTRACTOR will immediately return such tools and/or equipment to the WDB or dispose of them as prescribed by the WDB.
- b. All non-expendable property acquired with program funds provided, in whole or in part, under this AGREEMENT shall become property of the WDB at the time of acquisition and shall be returned to the WDB upon termination of the AGREEMENT and completion of the program or at such time as the WDB makes a request for such property. Non-expendable property is defined as property which will not be consumed or lose its identity during the AGREEMENT term, has a unit value in excess of \$1,000 at the time of purchase, and is expected to have a useful life of one year or more.
- c. CONTRACTOR shall obtain advance written approval of WDB for purchase of any non-expendable equipment having a unit purchase price of \$1,000 or more, and use expectancy in excess of one year.
- d. Property records for non-expendable property shall be accurately maintained by CONTRACTOR and shall reflect the following:
  - (1) a description of the property;
  - (2) acquisition date and costs;
  - (3) supplier; and
  - (4) percentage of the cost of the property purchased with funds from this AGREEMENT.
- e. CONTRACTOR shall insure that adequate safeguards are provided to prevent loss, damage or theft of the property. In the case of all suspected thefts and if there is any possibility of a criminal cause of the loss or damage, CONTRACTOR shall report the loss, damage, or theft to the police, unless the possible crime occurred in another jurisdiction, in which case CONTRACTOR shall report it to the law enforcement authorities with that jurisdiction and CONTRACTOR shall provide a copy of the law enforcement report to the WDB.

## **20. CONFIDENTIALITY REQUIREMENTS**

The WDB and CONTRACTOR will exchange various kinds of information pursuant to this 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 County of Monterey, State of California EDD, California Department of Social Services, California Department of Education, California Department of Corrections and Rehabilitation, County Welfare Department(s), County IV-D Directors Office of Child Support, Office of the District Attorney, California Department of Mental Health, California Office of Community Colleges and Department of Alcohol and Drug Programs.

The WDB and CONTRACTOR agree that:

- a. Each party must recognize and safeguard personally identifiable information (PII) and information designated as sensitive in accordance with Uniform Guidance 2 CFR 200.303 – Safeguarding Personally Identifiable Information. CONTRACTOR must take reasonable measures to safeguard protected PII, as well as any information that the WDB designates as sensitive. Both CONTRACTOR and the WDB must meet the requirements in Training and Employment Guidance letter (TEGL) 39-11, Guidance on the Handling and Protection of Personally Identifiable Information, located at [http://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=7872](http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=7872).
- b. Each party shall keep all information that is exchanged between them in the strictest confidence and make sure information available to their respective employees is only on a “need-to-know” basis.
- c. 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.
- d. CONTRACTOR agrees that information obtained under this 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.
  - (1) Aggregate Summaries: All reports and/or publications developed by CONTRACTOR 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.
  - (2) Publication: Prior to publication, CONTRACTOR 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.
  - (3) 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.
- e. Each party agrees that no disaggregate data, identifying individuals or employers, shall be released to outside parties or the public.
- f. CONTRACTOR shall notify the WDB of any actual or attempted information security incidents, within 24 hours of initial detection, by telephone at (831) 759-6644 or (831) 796-6434. 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. CONTRACTOR shall cooperate with the WDB in any investigation of 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 CONTRACTOR learns of a breach in the security of the system which contains confidential data obtained under this AGREEMENT, then CONTRACTOR must provide notification to individuals pursuant to Civil Code Section 1798.82.
- g. CONTRACTOR 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 AGREEMENT. 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.



- h. 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.
- i. 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.
- j. 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.
- k. 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.
- l. If the WDB or CONTRACTOR enters into an AGREEMENT with a third-party to provide WIOA services, the WDB and CONTRACTOR agree 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 CONTRACTORS, or employees.
- m. CONTRACTOR may, in its program operations, allow an individual to register for resume-distribution services at the same time the individual enrolls in the Virtual Job Center or CalJOBS. CONTRACTOR shall ensure that it and all subCONTRACTORS comply with the confidentiality requirements of this AGREEMENT and any other terms of this AGREEMENT that may be applicable. In addition, the following requirements must be adhered to by CONTRACTOR and its subCONTRACTORS:
  - (1) All client information submitted over the Internet to CONTRACTOR and/or subCONTRACTOR(s) databases must be protected, at a minimum, by 128-bit Secure Socket Layer (SSL) encryption. Client's social security numbers must be stored in a separate database within CONTRACTOR and/or subCONTRACTOR(s) network of servers, and protected by a firewall and a secondary database server firewall or AES1 data encryption. If a CONTRACTOR and/or subCONTRACTOR(s) obtain confidential information, the AGREEMENT between CONTRACTOR and its subCONTRACTOR(s) 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 Uniform Guidance 2 CFR Part 200 and DOL Exceptions 2 CFR Part 2900, social security numbers and other client specific information shall not be retained for more than three years after a client completes services. CONTRACTOR and/or subCONTRACTOR(s) 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.
  - (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 CONTRACTOR and/or 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 CONTRACTOR and subCONTRACTOR(s) AGREEMENT scope of services.
  - (3) CONTRACTOR must give an America's Job Center of California (Job Center) or One-Stop Career Center (One-Stop) client the option to use the Job Center or One-Stop services, including Virtual Job Center or CalJOBS, even if he or she chooses not to use any services of CONTRACTOR and/or subCONTRACTOR(s). This option shall be prominently, clearly, and immediately communicated to the client upon registration within the Job Center or One-Stop for the Virtual Job Center or CalJOBS. This obligation applies even if CONTRACTOR's and/or subCONTRACTOR's resume-distribution services, or any other services are offered to the client.

- (4) CONTRACTOR and/or subCONTRACTOR(s) must clearly disclose all of its potential and intended uses of the client's personal and/or demographic information for the services the client seeks and for any other services CONTRACTOR and/or subCONTRACTOR(s) offers. CONTRACTOR and/or subCONTRACTOR(s) shall not use a client's personal and/or demographic information without the client's prior permission. A link to CONTRACTOR and/or 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 WDB modifies State automated systems such as the CalJOBS or VOS systems, it shall provide reasonable notice of such changes to CONTRACTOR and/or subCONTRACTOR(s). CONTRACTOR shall be responsible to communicate such changes to its subCONTRACTOR(s) in the local area.
- n. 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.