

**AGREEMENT BETWEEN
THE COUNTY OF SAN MATEO
AND
WESTED**

THIS AGREEMENT, entered into this ____ day of _____, 20____,
by and between the COUNTY OF SAN MATEO, hereinafter called "County," and WEST
ED, hereinafter called "Contractor";

W I T N E S S E T H:

WHEREAS, pursuant to Government Code, Section 31000, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof;

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of design and implementation of an evaluation plan that analyzes the process, output, and outcome data for both model system-building and for participant activities.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. Exhibits and Attachments

The following exhibits and attachments are included hereto and incorporated by reference herein:

Exhibit A—Scope of Work
Exhibit B—Payments and Rates
Exhibit C – Program Specific Requirements
Attachment I—§504 Compliance
Attachment II – Contractor’s Declaration Form

2. Services to be performed by Contractor

In consideration of the payments set forth herein and in Exhibit “B,” Contractor shall perform services for County in accordance with the terms, conditions and specifications set forth herein and in Exhibit “A and Exhibit C.”

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A," County shall make payment to Contractor based on the rates and in the manner specified in Exhibit "B." The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed Three Hundred Sixty Five Thousand Dollars, (\$365,000).

4. Term and Termination

Subject to compliance with all terms and conditions, the term of this Agreement shall be from October 22, 2012 through June 30, 2015.

This Agreement may be terminated by Contractor, the Director of the Human Services Agency or his/her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

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 County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. 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.

5. Availability of Funds

The County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon unavailability of Federal, State, or County funds, by providing written notice to Contractor as soon as is reasonably possible after the County learns of said unavailability of outside funding.

6. Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent Contractor and not as an employee of the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

7. Hold Harmless

Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, including Contractor, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, or (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County, its officers, agents, employees, or servants, resulting from the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

9. Insurance

The Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this paragraph has been obtained and such insurance has been approved by Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. The Contractor shall furnish the County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the County of any pending change in the limits of liability or of any cancellation or modification of the policy.

- (1) **Worker's Compensation and Employer's Liability Insurance** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware 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 I will comply with such provisions before commencing the performance of

the work of this Agreement.

- (2) **Liability Insurance** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from contractors operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- | | |
|---|-------------|
| (a) Comprehensive General Liability | \$1,000,000 |
| (b) Motor Vehicle Liability Insurance | \$1,000,000 |
| (c) Professional Liability | \$1,000,000 |

County and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the County of San Mateo at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

10. Compliance with laws; payment of Permits/Licenses

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, including, but not limited to, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by reference herein as Attachment "I," which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. Further, Contractor certifies that the Contractor and all of its subcontractors will adhere to all applicable provisions of Chapter 4.106 of the San Mateo County Ordinance Code, which regulates the use of disposable food service ware.

In the event of a conflict between the terms of this agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

11. Non-Discrimination and Other Requirements

- A. *Section 504 applies only to Contractor who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.
- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.
- C. *Equal employment opportunity.* Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County of San Mateo upon request.
- D. *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to
 - i) termination of this Agreement;
 - ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;

- iii) liquidated damages of \$2,500 per violation;
- iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this section, the County Manager shall have the authority to examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- F. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

12. Compliance with Contractor Employee Jury Service Ordinance

Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the employees' regular pay the fees received for jury service.

13. Retention of Records, Right to Monitor and Audit

(a) CONTRACTOR shall maintain all required records for three (3) years after the COUNTY makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the County, a Federal grantor agency, and the State of California.

(b) Reporting and Record Keeping: CONTRACTOR shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the COUNTY.

(c) CONTRACTOR agrees to provide to COUNTY, to any Federal or State department having monitoring or review authority, to COUNTY's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

14. Merger Clause

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement or specification set forth in this body of the agreement conflicts with or is inconsistent with any term, condition, provision, requirement or specification in any exhibit and/or attachment to this agreement, the provisions of this body of the agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

15. Controlling Law and Venue

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or the United States District Court for the Northern District of California.

16. Notices

Any notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when both (1) transmitted via facsimile to the telephone number listed below and (2) either deposited in the United States mail, postage prepaid, or when deposited for overnight delivery with an established overnight courier that provides a tracking number showing confirmation of receipt for transmittal, charges prepaid, addressed to:

In the case of County, to: County of San Mateo – Workforce Development
John Joy, Director, San Mateo County Works
262 Harbor Boulevard, Building A
Belmont, CA 94002
(650) 802-5173

In the case of Contractor, to: West Ed
Virgilio Tinio Jr., Contracts Administrator
730 Harrison Street
San Francisco, CA 94107
(415) 565-3012

In the event that the facsimile transmission is not possible, notice shall be given both by United States mail and an overnight courier as outlined above.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: _____
President, Board of Supervisors, San Mateo County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

WEST ED


Contractor's Signature

Virgilio F. Tinio, Jr.
Contracts Administrator
WestEd

Date: 1/9/13

Long Form Agreement/Non Business Associate v 8/19/08

Exhibit A
Contract with West Ed
Scope of Work

I. Project Goals:

The goal of this contract is to obtain the design and implementation of an evaluation plan that analyzes the process, output, and outcome data for both model system-building and for participant activities.

II. Contractor Services:

In consideration of the payments set forth in Exhibit "B", Contractor shall provide the following services:

The Contractor shall be responsible for design and implementation of an evaluation plan that analyzes the process, output, and outcome data for both model system-building and for participant activities. Specific deliverables have been established; however deliverables may change as the project progresses. Deliverables may be changed or added as agreed upon by all parties. The timeline shown is an estimate. The timeline may be adjusted as agreed upon by all parties. Deliverables include but are not limited to the following:

Phase I: Developmental Evaluation – the purpose of this evaluation is to create rigorous inquiry that supports innovation in complex systems. A major goal of this project is to create change and to document the process. This evaluation type will seek to capture information about how the context of dynamics of change influence new practices that lead to desired outcome. The evaluation is learning focused. Questions to be answered are: A) What produces changes, B) What are we learning, C) What is being created, D) What idea/plans are emerging, and E) How are ideas being explored. Phase I deliverables include the following:

- Refine Evaluation Plan
- Develop and Collect Data
- Produce and Present Quarterly Reports
- Disseminate Findings

Phase II: Formative Evaluation – the purpose of this evaluation is to create rigorous examination of program implementation to improve design and performance. This evaluation seeks to learn what factors affect why a program is working or not. It is process focused. Questions to be answered are: A) Have things gone as planned, B) How have/can activities be standardized, C) What could/should be enhanced, and D) How can the project be refined. Phase II deliverables include the following:

- Refine Evaluation Plan
- Develop and Collect Data
- Produce and Present Quarterly Reports
- Produce and Present Summary Reports
- Disseminate Findings

Phase III: Summative Evaluation – the purpose of this evaluation is to create rigorous

analysis to determine with the project achieved. It looks at the impact of intervention on target groups (ESL learners) and is outcome focused. It seeks to answer the following: A) Have project goals been met, B) What difference/impact has been made, C) Where there unintended consequences, D) What worked, what didn't and why, and E) What can be done to improve results. Phase III deliverables include the following:

- Refine Evaluation Plan
- Develop and Collect Data
- Produce and Present Quarterly Reports
- Produce and Present Summary Reports
- Disseminate Findings

III. Monitoring Requirement

Contractor shall provide Reports throughout the project and Summary Reports in year two and year three as outlined below:

1. Deliverables completed;
2. Plan Development;
3. Model Development;
4. Data Collection;
5. Cost Accounting; and
6. Overall Progress of Project

Reports should be submitted to: Dann Bergman, Human Services Agency Workforce Development - 262 Harbor Boulevard, Building A - Belmont, CA 94002.

Exhibit B
West Ed
Payments and Rates

In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor based on the following fee schedule:

1. County shall pay contractor based on phases listed below and the deliverables completed as shown in Exhibit A.
2. The grant from the US Department of Labor shall be managed in compliance with all federal and state guidelines using cost accounting and cost reimbursement methodology.
3. Under no circumstances shall services under this agreement exceed \$365,000.

Phase I:	Cost
Task 1.1 Refine Evaluation Plan	\$37,911
Task 1.2 Develop and Collect Data	\$24,045
Task 1.3 Produce and Present Quarterly Reports	\$35,772
Task 1.4 Disseminate Findings	\$39,996
Year One Total	\$137,724

Phase II:	
Task 2.1 Refine Evaluation Plan	\$25,365
Task 2.2 Develop and Collect Data	\$16,448
Task 2.3 Produce and Present Quarterly Reports	\$25,152
Task 2.4 Produce and Present Summary Reports	\$26,955
Task 2.5 Disseminate Findings	\$27,545
Year Two Total	\$121,465

Phase III:	
Task 3.1 Refine Evaluation Plan	\$22,669
Task 3.2 Develop and Collect Data	\$14,165
Task 3.3 Produce and Present Quarterly Reports	\$21,575
Task 3.4 Produce and Present Summary Reports	\$23,522
Task 3.5 Disseminate Findings	\$23,880
Year Three Total	\$105,811

TOTAL	\$365,000
--------------	------------------

EMPLOYMENT AND TRAINING ADMINISTRATION
WORKFORCE INVESTMENT ACT
PROGRAM SPECIFIC REQUIREMENTS

GENERAL PROVISIONS

Section 1: Compliance

In performance of this agreement, Contractor will fully comply with:

- a. The provisions of the WIA and all regulations, directives, policies, procedures, amendments and executive orders including but not limited to Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity" as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) issued pursuant thereto and/or legislation, regulations, policies, directives, and/or procedures which may replace WIA;
- b. The Family Economic Security Act (FESA), California Unemployment Insurance Code Section 15000 et. seq., to the extent permitted by federal law; all State regulations and Governor's policies, directives and procedures issued pursuant to FESA; and legislation, regulation, policy and/or procedures which may replace FESA.
- c. Contractor will ensure diligence in managing programs under this agreement including the carrying out of the appropriate internal monitoring activities and in taking prompt corrective action against known violations of the WIA.
- d. All State legislation and regulations to the extent permitted by federal law and all policies, directives and/or procedures, which implement the WIA.

Section 2: Certifications

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 the State of California.
- b. Sectarian Activities – Contractor certifies that this agreement does not provide for the advancement of 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 whatever, as specified by Article XVI, Section 5 of the Constitution, regarding separation of church and state.
- c. 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 contract or grant with the Department of Labor (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, *Debarment and Suspension Certification*: By signing this agreement, Contractor hereby certifies under penalty of perjury under the laws of the State of California the Contractor will comply with regulations implementing Executive Orders 12459 and 12689, Debarment and

Suspension, 29 C.F.R. 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 transactions by any federal department or agency.
 2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment 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 paragraph 2 of this 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 of default.
 5. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this agreement.
- e. *Drug-Free Workplace Certification:* By signing this agreement, the Contractor hereby certifies under penalty of perjury under the laws of the State of California that the Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq. And 29 CFR Part 98) 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, as required by Government Code Section 8350(a).
 2. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - 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. Provide, as required by Government Code Section 8355©, that every employee who works on the proposed contract:
 - will receive a copy of the company's drug-free policy statement; and,
 - will agree to abide by the terms of the company's statement as a condition of employment on the contract.
- f. *Lobbying Restrictions:* By signing this agreement the Contractor 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, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this federal contract, grant, loan, and cooperative agreement, the undersigned shall complete and submit Standard Form-LLL (exhibit 1), "Disclosure Form to Report Lobbying" in accordance with its instructions.
 3. The undersigned shall require that the language of this certification be included in the award documents for subgrant/contract transactions over \$100,000 (per OMB) at all tiers (including subgrants, contract 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 this 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.
- g. *National Labor Relations Board:* The Contractor (if not a public entity), by signing this 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 Contractor within the immediately preceding two-year period because of Contractor failure to comply with an order of a federal court which orders the Contractor to comply with an order of the National Labor Relations Board.
- h. *Union Activities:* Contractor, by signing this Grant, hereby acknowledges the applicability of Governmental Code 16645 through 16649 to this Agreement. Furthermore, Contractor, by signing this agreement, hereby certifies that:
1. No state funds disbursed by this agreement will be used to assist, promote or deter union organizing.
 2. Contractor shall account for state funds disbursed for a specific expenditure by this agreement, to show those funds were allocated to that expenditure.
 3. Contractor shall, where state funds are not designated as described in (2) above, allocate, on a pro-rata basis, all disbursements that support the program.
 4. If Contractor makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no state funds were used for those expenditures, and that Contractor shall provide those records to the Attorney General upon request.

- i. *Child Support Compliance Act:* In accordance with the Child Support Compliance Act, the Contractor 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 earning 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).
- j. Contractor certifies that it will comply with the requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and Federally assisted program.
- k. Contractor certifies that it will comply with the provisions of Hatch Act, which limits the political activity of certain State and local government employees as appropriate. No program under the Act may involve political activity.
- l. If the amount of the Agreement exceeds \$100,000, the Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to Section 306 of the Clean Air Act and 508 of the Clean Water Act.
- m. Contractor certifies that it possesses the legal authority to apply for the funding; that a resolution, motion, or similar action has been duly adopted or passed as an official act of the Contractor's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the application to act in connection with the application and to provide such additional information as may be required.
- n. Contractor will maintain appropriate standards for health and safety in work and training situations.
- o. Contractor will ensure that any and all construction laborers and mechanics employed under this agreement shall be paid wages in accordance with the Davis-Bacon Act as amended (40U.S.C. 276a-276a-7), and will be covered by labor standards pursuant to the Davis-Bacon Act.
- p. Contractor certifies that all training, instructional and on-the-job, shall only be for occupations for which the County of San Mateo has determined that there is a reasonable expectation for employment in the area in which the participant intends to seek employment.
- q. Contractor certifies that no program shall impair existing contracts for services or collective bargaining agreements, except that WIA-funded programs which would be inconsistent with the terms of a collective bargaining agreement shall not be undertaken without the written concurrence of the labor organization and employer concerned. No funds under this agreement shall be used to assist, deter, or promote union organization.
- r. Contractor certifies that no participant shall be employed or job opening filled (1) when any other individual is on layoff from the same or substantially equivalent job,

or (2) when the employer has terminated the employment of a regular employee or otherwise reduced its work force with the intention of filling the vacancy created by hiring a participant whose wages are subsidized under the Act. No currently employed worker shall be displaced by any participant (including partial displacement such as a reduction in the hours of non-overtime work, wages, or employment benefits).

- s. Contractor certifies that no participant who is engaged in a WIA funded program may be charged a fee for placement or referral services.
- t. Contractor certifies that no funds available under this Act may be used for contributions on behalf of any participant to retirement systems or plans.
- u. Contractor will consult with the appropriate labor organizations and/or employer representatives in the design, operation or modification of the programs under this agreement.
- v. Contractor certifies that it will comply with the mandatory standards and policies related to energy efficiency, which are contained in the State energy conservation plan issued in compliance with the Energy Policy Conservation Act (Public Law 96-163).

Section 3: Standards of Conduct

The following standards apply to Contractor:

- a. General Assurance – Every reasonable course of action will be taken by the Contractor in order to maintain the integrity of this 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. The Contractor, its executive staff and employees, in administering this Agreement, will avoid situations, which give rise to a suggestion that any decision was influenced by prejudice, bias, special interest or desire for personal gain. Contractor agrees to conform to the nondiscrimination requirements as referenced in WIA, Section 188.
- b. Employment of Former State Employees – Contractor will ensure that any of its employees who were formerly employed by the State of California in a position that could have enabled such individuals to impact policy regarding or implementation of programs covered by this agreement, will not be assigned to any phase of the activities conducted pursuant to this agreement for a period of not less than two years following the termination of such employment.
- c. Conducting Business Involving Relatives – No relative by blood, adoption or marriage of any executive or employee of the Contractor, will receive favorable treatment when considered for enrollment in programs provided by, or employment with, the Contractor.
- d. Conducting Business Involving Close Personal Friends and Associates – Executives and employees of the Contractor will be particularly aware of the varying degrees of influence that can be exerted by personal friends and associates and, in administering the Agreement, will exercise due diligence to avoid situations which give rise to an assertion that favorable treatment is being granted to friends and associates.

When it is in the public interest for the Contractor to conduct business with a friend or associate of an executive or employee of the Contractor, an elected official in the area or a member of the Work Force Investment Board (WIB), a permanent record of the transaction will be retained.

- e. Avoidance of Conflict of Economic Interest – An executive or employee of the Contractor, an elected official in the area or a member of a WIB, 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 Contractor. Supplies, materials, equipment or services purchased with Agreement funds will be used solely for purposes allowed under this 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.
- f. The Contractor agrees to comply with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, and all applicable federal and State laws and regulations, guidelines and interpretations issued thereto.
- g. Employment of Former State Employees: The Contractor will ensure that any of its employees who were formerly employed by the State of California in a position that could have enabled such individuals to impact policy regarding or implementation of programs covered by this agreement, will not be assigned to any part or phase of the activities conducted pursuant to this agreement for a period of not less than two years following the termination of such employment.

Section 4: Coordination

- a. Contractor will, to the maximum extent feasible, coordinate all programs and activities supported under this part with the other programs under the WIA, the Wagner-Peyser Act, Title 38 of the United States Code, and other employment and training programs at the State and local level.
- b. Contractor shall take appropriate steps to provide for increased participation of qualified special disabled and Vietnam-era veterans with special emphasis on qualified veterans who served in the Indo-China theater on or after August 5, 1964, and on or before May 7, 1975, assuring adequate training and employment opportunities for such veterans in its programs.
- c. Contractor shall, to the maximum extent feasible, coordinate services with the appropriate Veterans Administration Facilities in utilizing apprenticeship and other on-the-job training activities under Section 1787 of Title 38 U.S. Code, and it shall consult with the appropriate apprenticeship agency concerning any training activities in apprenticeship occupations.
- d. Contractor shall take appropriate steps to provide for increased participation of women in non-traditional jobs.

Section 5: Property

- a. All property, finished or unfinished documents, data, studies and reports prepared or purchased by the Contractor under this Agreement, will be disposed of in accordance with the direction of the County. In addition, any tools and/or equipment furnished to the Contractor by the County and/or purchased by the Contractor with funds pursuant to this Agreement, will be limited to use within the activities outlined in this Agreement and will remain the property of the United States Government and/or the County of San Mateo. Upon termination of this agreement, Contractor will immediately return such tools and/or equipment to the County or dispose of them in accordance with the direction of the County of San Mateo.
- b. Contractor will follow the applicable federal regulations and state directives when purchasing supplies and equipment. Subgrantees will submit a written request and receive approval before making any purchase of an item with a base price of \$5,000 or greater.
- c. In the event of untimely delivery or defectiveness of County furnished property, Contractor will continue to be obligated to continue performance under this Agreement without any adjustment in cost to the County. Contractor shall at all times be liable for the loss or destruction of any County furnished property under this Agreement.
- d. Funds provided under the Agreement shall not be used for the purchase of real property or options to purchase.
- e. Contractor shall acquire, maintain and/or dispose of property purchased with funds received under this agreements, from pervious agreements and County purchased property located at the Contractor's site in accordance with the WIA Regulations for property purchased with WIA funds, and in accordance with County procedures for other property.
- f. Contractor must account for and control WIA and County property. Adequate records shall be maintained to reflect the location of such property at all times. Equipment shall not be removed from the premises without the prior written approval of the County.
- g. Contractor shall report loss, damage or theft of any property to the County and to the appropriate local authorities within two (2) hours of discovery. Property stolen, damaged or destroyed shall be replaced by Contractor with non-federal funds. Contractor must ensure that title for any replacement equipment clearly rests with the County. In the event of untimely delivery or defectiveness of County furnished property, Contractor will continue to be obligate to continue performance under this agreement without any adjustment in cost to the County.
- h. WIA equipment is to be limited to use within the activities outlined in this agreement. If purchased for the purpose of providing training to WIA participants, equipment shall be used solely for the use of WIA unless the County has approved a shared agreement.

Section 5A: Intellectual Property Provisions

1. Federal Funding

In any agreement funded in whole or in part by the federal government, County may acquire and maintain the Intellectual Property rights, title, and ownership, which result directly or indirectly from the Agreement, 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 worlds in any manner for governmental purposes and to have and permit others to do so.

2. Ownership

- (a) Except where County has agreed in a signed writing to accept a license, County 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 Contractor or County which result directly or indirectly from this Agreement.
- (b) For the purposes of this 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 County, 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, county or jurisdiction.
 - 1) 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 similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, education 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 purpose of producing those final products. "Works" does not include articles submitted to peer review or reference journals or independent research projects.
- (c) In the performance of this Agreement, Contractor may exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this Agreement. In addition, under this Agreement, Contractor may access and utilize certain of County's Intellectual Property in existence prior to the effective date of this Subgrant. Except as otherwise set forth herein, Contractor shall not use any

of County's Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of County. Except as otherwise set forth herein, neither the Contractor nor the County shall give any ownership interest in or rights to its Intellectual Property to the other Party. If during the term of this Agreement, Contractor accesses any third-party Intellectual Property that is licensed to County, Contractor agrees to abide by all license and confidentiality restrictions applicable to County in the third-party's license agreement.

- (d) Contractor agrees to cooperate with County in establishing or maintaining County's exclusive rights in the Intellectual Property, and in assuring County's sole rights against third parties with respect to the Intellectual Property. If the Contractor enters into any agreements or subcontracts with other parties in order to perform this Agreement, Contractor shall require the terms of the agreement(s) to include all Intellectual Property provisions of **paragraphs one through nine**. Such terms must include, but are not limited to, the Contractor assigning and agreeing to assign to County all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the Contractor or County and which result directly or indirectly from this Agreement or any contract.
- (e) Contractor further agrees to assist and cooperate with County 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 County's Intellectual Property rights and interests.

3. Retained Rights/License Rights

- (a) Except for Intellectual Property made, conceived, derived from or reduced to practice by Contractor or County and which result directly or indirectly from this Agreement, Contractor 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 Agreement. Contractor hereby grants to County, 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 Contractor'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 Contractor assigns all rights, titles and interest in the Intellectual Property as set forth herein.
- (b) Nothing in this provision shall restrict, limit, or otherwise prevent Contractor from using any ideas, concepts, know-how, methodology or techniques related to its performance under this Subgrant, provided that Contractor's use does not infringe the patent, copyright, trademark rights, license or other Intellectual Property rights of County or third party, or result in a breach or default of any provisions of **paragraph one through nine** or result in a breach of any provisions of law relating to confidentiality.

4. Copyright

- (a) Contractor agrees that for purposes of copyright law, all works (as defined in Ownership, Section 2, paragraph (b) 1.) of authorship made by or on behalf of Contractor in connection with Contractor's performance of this Agreement shall be deemed "works made for hire." Contractor further agrees that the work of each person utilized by Contractor in connection

with the performance of this Agreement will be "work made for hire," whether that person is an employee of Contractor or that person has entered into an agreement with Contractor to perform the work. Contractor shall enter into a written agreement with any such person that: (i) all work performed for Contractor shall be deemed a "work made for hire" under the Copyright Act and (ii) that person shall assign all right, title, and interest to County to any work product made, conceived, derived from, or reduced to practice by Contractor and which result directly or indirectly from this Agreement.

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

5. Patent Rights

With respect to inventions made by Contractor in the performance of this Agreement, which did not result from research and development specifically included in the Agreement's scope of work, Contractor hereby grants to County a license as described under **paragraph three** 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 Agreement's scope of work, then Contractor agrees to assign to County, without additional compensation, all its right, title and interest in and to such inventions and to assist County in securing United States and foreign patents with respect thereto.

6. Third-Party Intellectual Property

Except as provided herein, Contractor agrees that its performance of this Agreement shall not be dependent upon or include any Intellectual Property of Contractor or third party without first: (i) obtaining County's prior written approval; and (ii) granting to or obtaining for County's, without additional compensation, a license, as described in **paragraph three**, for any of Contractor's or third-party's Intellectual Property in existence prior to the effective date of this Agreement. If such a license upon these terms is unattainable, and County determines that the Intellectual Property should be included in or is required for Contractor's performance of this Agreement, Contractor shall obtain a license under terms acceptable to County.

7. Warranties

- (a) Contractor represents and warrants that:

- 1) It has secured and will secure all rights and licenses necessary for its performance of this Agreement
 - 2) Neither Contractor's performance of this Agreement, nor the exercise by either Party of the rights granted in this 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 Contractor and which result directly or indirectly from this 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 is currently no actual or threatened claim by any such third party based on an alleged violation of any such right by Contractor.
 - 3) Neither Contractor's performance nor any part its performance will violate the right of privacy of, or constitute a libel or slander against any person or entity.
 - 4) It has secured and will secure all rights and licenses necessary for Intellectual Property including, not limited to, consents, waivers or releases from all authors.
 - 5) 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.
 - 6) 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 County in this Agreement.
 - 7) It has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
 - 8) 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 Contractor's performance of this Agreement.
- (b) COUNTY MAKES NO WARRANTY, THAT THE INTELLECTUAL PROEPRTY RESULTING FROM THIS AGREEMENT DOES NOT INFRINGE UPON ANY PATENT, TRADEMARK, COPYRIGHT OR THE LIKE, NOW EXISTING OR SUBSEQUENTLY ISSUED.

8. Intellectual Property Indemnity

- (a) Contractor shall indemnify, defend and hold harmless the County 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 Contractor 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 Contractor pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of County'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 Contractor or County and which result directly or indirectly from this 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. County reserves the right to participate in and/or control, at Contractor's expense, any such infringement action brought against County.

- (b) Should any Intellectual Property licensed by the Contractor to County under this Agreement become the subject of an Intellectual Property infringement claim, Contractor will exercise its authority reasonable and in good faith to preserve County's right to use the licensed Intellectual Property in accordance with this Agreement at no expense to County. County shall have the right to monitor and appear through its own counsel (at Contractor's expense) in any such claim or action. In the defense or settlement of the claim, Contractor may obtain the right for County to continue using the licensed Intellectual Property; or, replace or modify the licensed Intellectual Property so that the replace 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, County may be entitled to a refund of all monies paid under this Agreement, without restrictions or limitation of any other rights and remedies available at law or in equity.
- (c) Contractor agrees that damages alone would be inadequate to compensate County for breach of any term of this Intellectual Property provisions of **paragraphs one through nine** by Contractor. Contractor acknowledges County would suffer irreparable harm in the event of such breach and agrees County 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.

9. Survival

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

Section 6: Termination

- a. Should Contractor fail to perform the covenants contained herein at the time and in the manner herein provided, the County may at that time or any time thereafter terminate this agreement upon written notice. In the event of such termination, County may immediately proceed with the work to be performed under this agreement in any manner deemed proper by the County. County may at its sole discretion, deduct from the total amount paid to Contractor under this Agreement all or part of the cost associated with completion of such work.

- b. In the event that invoices are in the County's opinion inconsistent with Exhibit B, Rate and Terms of Payment, or if other irregularities exist, County may withhold all or part of the funds under this Agreement until resolution of the inconsistencies/irregularities to County's satisfaction, provided that the County will not unreasonable withhold funds.
- c. All funds under this Agreement must be spent only in conformity with the Exhibits A, B and C attached hereto. County reserves the right to withhold funds, require re-planning or take appropriate actions in the event that expenditures are not consistent with the levels in the budget.

Section 7: Amendments

This agreement may be modified by the County upon written notice to the Contractor under the following circumstances:

- a. There is an increase or decrease in Federal or State funding levels.
- b. A modification is required in order to implement an adjustment of modification to the plan of the program described in Exhibit A, Description of Services.
- c. Funds awarded to the Contractor have not been expended in accordance with the schedule included in the approved plan of the program described in Exhibit A. After consultation with the Contractor, the County 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 timely manner consistent with State and federal law, regulations and policies, reverting to the County.
- d. There is a change in State or Federal law or regulation requiring a change in the provisions of this Agreement.
- e. County shall monitor this Agreement by evaluating the performance indicators described in Exhibit A. Contractor will make every effort to keep the performance indicators at the level agreed to in the Agreement; however, if any performance indicator falls below eighty percent (80%) for three (3) consecutive months, the contract may be renegotiated.
- f. Except as provided above, this Agreement may be amended only in writing by the mutual agreement of both parties.

Section 8: Management Information Systems Policies and Procedures

- a. Contractor shall comply with the Job Training Automation (JTA) system policies and procedures contained in the Workforce Investment Act Handbook as amended and revised, and any directive or other bulletin issued which clarifies or modifies County policies and procedures.

- b. If the Contractor conducts eligibility determination, Contractor shall assure that only eligible participants (supported with documentation) are enrolled in the program funded under this Agreement. Failure of this condition shall entitle County to recover disallowed costs incurred by any ineligible participant.

Section 9: Accounting and Cash Management

- a. Contractor will comply with controls, record keeping and fund accounting procedure requirements of WIA, Federal and State regulations and directives to ensure the proper accounting for program funds paid under this agreement.
- b. Contractor shall maintain fiscal accounts in a manner sufficient to permit tracking of funds received and levels of expenditures. Records and books shall be auditable and up to date at all times.
- c. Income (including interest income) generated as a result of the receipt of funds under this agreement will be utilized in accordance with the policy and procedure established by the County. Contractor will account for any such income generated separately.
- d. Contractor shall immediately advise County of any improper or fraudulent use of funds under this Agreement, any misinformation supplied to County, or any circumstances giving rise to possible or apparent misuse of funds and do the following:
 - 1. All such instances must be reported to the Compliance Review Division (CRD) and the Office of Inspector General (OIG) at the following addresses:
Compliance Review Division

722 Capitol Mall MIC 22M

PO Box 826880

Sacramento, CA 94280-0001

Department Of Labor, Office of the Inspector General

200 Constitution Avenue, NW

Room S-5502

Washington, DC 20210
 - 2. A written report must be filed within one day of detection or discovery of the incident.
- e. Contractor may be required to establish a separate bank or trust account for funds received, and shall maintain a separate fund accounting for these funds.
- f. Contractors that are public or non-profit entities with a fixed unit price agreement shall use revenues in excess of costs, or so called "profits" for the following purposes:

1. Add the "profit" to funds committed to the program and use it to further program objectives; or
2. Deduct the "profit" from the fixed unit price performance billing in determining the net amount on which WIA share of billing will be used;
3. Use the "profit" to satisfy the WIA matching requirements, if applicable.

In addition, Contractor shall:

1. Submit the amount of excess revenue or "profit" to San Mateo County WIB within 45 days after the end of the fiscal year; and
 2. Maintain the necessary financial records which account for the use of these funds, in anticipation of possible audit.
 3. Remit immediately to the San Mateo County WIB any excess revenue which will not be utilized within one year after the end of the fiscal year in which it was earned.
- g. Costs incurred before and after the effective dates of the Agreement will not be allowed.
- h. Contractor shall report any additional or unexpected funds received in conjunction with the services provided under the terms of this Agreement to the County upon receipt of such funds or notification of award of such funds.

Section 10: Reporting

- a. Contractor will compile and submit reports of activities, expenditures, status of cash and closeout information by the specified dates as prescribed by the County.
- b. Contractor shall submit an invoice/report within 15 calendar days after the end of each month unless a different due date is granted in writing by the County Representative.

Section 11: Grievance and Complaint System

Contractor will establish and maintain a grievance and complaint procedure in compliance with WIA, Federal Regulations and State Statutes, Regulations and Policy and Peninsula Works MOU.

Section 12: Conflicts

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

Section 13: Audits

- a. The Contractor shall maintain and make available to auditors, at all levels, accounting and program records including supporting source documentation and cooperate with all auditors.
- b. The Contractor and/or auditors performing monitoring or audits of the Contractor or its subcontracting service providers will immediately report to the County any incident of fraud, abuse or other criminal activity in relation to this Agreement, the WIA, or its regulations.
- c. Before any funds are issued under this Agreement the Contractor will submit, to the County, the findings of the most recent audit. The Contractor will demonstrate that its financial accounting systems are adequate to satisfy Federal audit requirements per Federal Register, 20CFR, Section 629.42, dated February 12, 1988.
- d. Contractors that are public school districts, community college districts, or non-profit organizations, receiving \$25,000 or more in federal funds will be required to arrange for a financial compliance audit, in accordance with OMB A-110, or A-133 as applicable. Private-for-profit contractors are required to have an audit in accordance with the Workforce Investment Act. This audit must be conducted by an independent CPA chosen through a proper selection process. The cost, or portion of the cost, of such an audit is an allowable expense under WIA if specifically provided for in the cost detail and made a part of this Agreement as reflected in Exhibit B for cost reimbursable agreements. For fixed price agreements the cost of the audit may be negotiated as part of the total fixed price. There will be no further reimbursement for audit costs beyond the fixed price unless specifically identified in the agreed upon budget as a cost reimbursable item. A copy of this audit report must be furnished to the Workforce Investment Board within 15 days of the receipt of the audit report from the auditor.

WIA funds must be shown on the audit report separately and distinctly from the other funds of the Contractor and in accordance with the Federal catalog number. Any audit findings, questioned costs and disallowed costs affecting the WIA funds must be specifically reported and identified in the audit report.

- e. Responsibility for Audit Exceptions

1. Audit exceptions are defined as any unfavorable finding in any audit of Contractor's performance under this Agreement. Contractor is aware and is hereby on notice that any and all failure to comply with the Act, all rules, regulations, and amendments promulgated thereunder, relevant Federal, State, and local statutes, rules, and regulations, including requirements of the County, may result in Contractor liability to repay part or all of the funds under this Agreement.
2. Contractor will notify County in writing immediately of any audit exception(s). County may at that time or anytime thereafter, give notice of intent to terminate this Agreement subject to satisfactory corrections within thirty (30) days.
3. Contractor agrees to correct and resolve all audit exceptions to County's satisfaction and agrees to give such response to County as County deems necessary regarding any audit exception. Contractor is aware and is hereby on notice that audit exceptions may result in County liability to the United States Department of Labor and the State of California, among others, for part or all of the funds provided under this Agreement and so agrees to pay to County the full amount of County liability resulting from said audit exceptions attributable to the Contractor.

Section 14: Disallowed Costs

Contractor will be liable for and will repay, to County, any amounts expended under this 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.

Section 15: Subcontracting

The system for awarding contracts will contain safeguards to ensure that the Contractor does not contract with any entity whose officers have been convicted of fraud or misappropriation of funds or who have been debarred from receipt of federal funds.

Section 16: Educational Assistance Program Funds

Contractor shall report and pay to County any income received from student's Federal and State educational assistance grants, such as PELL grants, Supplemental Educational Opportunity Grants (SEOG), and other educational assistance programs. Receipt of such income plus WIA funds for the same training services may constitute double billing unless the WIA expenses are properly reduced. The report and payment shall be made to the county within 15 calendar days after the month that the educational assistance grant is received by the Contractor.

Section 17: Disclosure of Confidential Information

County and Contractor agree to maintain the confidentiality of other information concerning applicants, participants, or their families, which may be obtained through application forms, interview, tests, reports from public agencies, counselors, or any other source. Without permission of the applicant or participant, such information shall be divulged only as necessary for purposes related to the performance or evaluation of the Agreement, and then only to person having responsibilities under the Agreement, including those furnishing services to the project under Contractor and to governmental authorities, to the extent necessary for the proper administration of law.

Section 18: Cash Advances

- a. An initial cash advance, not to exceed the projected expenses for up to a six-week period, may be paid to Contractor upon submission of a written request and justification of the need for the advance that is acceptable to the County. Any Contractor receiving a cash advance is required to establish an interest income account to which all interest earned on advances must be posted quarterly and paid to the County. Subsequent advances would only be made upon request, provision of similarly acceptable justification of need, and after a reconciliation of prior advance and earned benchmark payments.

To maintain the element of risk to the Contractor, no advance will be made for the last six weeks of the contract. Further, irrespective of any other policy provisions, the County will solely determine a Contractor's potential for earning any requested advances based on a review of actual, ongoing, performance and reserves the right **not to advance** or to alternatively require a performance bond, irrevocable line of credit, title to property or other collateral.

- b. Contractor agrees to comply with specific plan for repayment of cash advance as outlined in Exhibit B.
- c. For any Agreement in which unexpected funds resulting from cash advances remain upon completion or termination of this Agreement, such funds shall be returned to County within sixty (60) days of the termination of Agreement.

Section 19: Nondiscrimination Clause

- a. The conduct of the Contractor will be in accordance with Title VI of the Civil Rights Act of 1964, and the Rules and Regulations promulgated thereunder and the provisions of WIA, Section 188. In addition:

1. During the performance of this agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, pregnancy, disability and denial of family care leave. Contractor and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and its subcontractor shall comply with all executive orders, including but not limited to Executive Order 11245 of September 24, 1965, entitled "Equal Employment Opportunity" as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60), the provisions of the Fair Employment and Housing Act (Governmental Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, and Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 1299(a-f), set forth in Chapter 5, Division 4 of Title 2 of the California Code of Regulations are incorporated into this contract or its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
2. Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

Section 20: Subcontracting

- a. Any of the work or services specified in this agreement which will be performed by other than by the Contractor will be evidenced by a written agreement specifying the terms and condition of such performance.
- b. The 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.
- c. The system for awarding contracts will contain safeguards to ensure that the Contractor does not contract with any entity whose officers have been convicted of fraud or misappropriation of funds within the last two years.

Section 21: Standards and Sanctions

- a. The Contractor is expected to make its best effort to achieve the standards set forth, and is subject to sanctions in the event that substantial compliance is not achieved.
- b. To the extent that the Contractor's performance adversely affects the County's performance, such sanctions will be applied to the Contractor in a manner consistent with Federal and State regulations.

Section 22: Confidentiality Requirements

The County and the 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 Employment Development Department, the California Department of Social Services, the California Department of Education, 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 Contractor and the County 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 written instructions to all its employees with access to information provided by the other party of the confidential nature of the information and of the penalties for unauthorized use or disclosure 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.
- c. 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.
- d. 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.
- e. If the County or Contractor enters into an agreement with a third party to provide WIA services, the County or Contractor 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.
- f. 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.

Section 23: Termination for Cause

The County has the right to withdraw from this Agreement if it is determined that Contractor has breached any section of this Agreement.

ATTACHMENT I

Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended

The undersigned (hereinafter called the "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)

- ☐ a. Employs fewer than 15 persons.
- ☒ b. Employs 15 or more persons and, pursuant to section 84.7 (a) of the regulation (45 C.F.R. 84.7 (a), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

Name of 504 Person - Type or Print

WestEd

Name of Contractor(s) - Type or Print

730 Harrison Street, San Francisco, CA 94107

Street Address or P.O. Box

San Francisco, CA 94107

City, State, Zip Code

I certify that the above information is complete and correct to the best of my knowledge.



Signature

Contracts Administrator

Title of Authorized Official

1/9/13

Date

*Exception: DHHS regulations state that:

"If a recipient with fewer than 15 employees finds that, after consultation with a disabled person seeking its services, there is no method of complying with (the facility accessibility regulations) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."

**Attachment II
County of San Mateo
Contractor's Declaration Form**

I. CONTRACTOR INFORMATION

Contractor Name:	West Ed	Phone:	(415) 565 - 3000
Contact Person:	Virgilio Tinio Jr., Contracts Administrator	Fax:	(415) 565-3012
Address:	730 Harrison Street San Francisco, CA 94107	Number of employees:	

II. EQUAL BENEFITS (check one or more boxes)

Contractors with contracts in excess of \$5,000 must treat spouses and domestic partners equally as to employee benefits.

- ☒ Contractor complies with the County's Equal Benefits Ordinance by:
- ☒ offering equal benefits to employees with spouses and employees with domestic partners.
 - ☐ offering a cash equivalent payment to eligible employees in lieu of equal benefits.
- ☐ Contractor does not comply with the County's Equal Benefits Ordinance.
- ☐ Contractor is exempt from this requirement because:
- ☐ Contractor has no employees, does not provide benefits to employees' spouses, or the contract is for \$5,000 or less.
 - ☐ Contractor is a party to a collective bargaining agreement that began on _____ (date) and expires on _____ (date), and intends to offer equal benefits when said agreement expires.

III. NON-DISCRIMINATION (check appropriate box)

- ☐ Finding(s) of discrimination have been issued against Contractor within the past year by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. Please see attached sheet of paper explaining the outcome(s) or remedy for the discrimination.
- ☒ No finding of discrimination has been issued in the past year against the Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other entity.

IV. EMPLOYEE JURY SERVICE (check one or more boxes)

Contractors with original or amended contracts in excess of \$100,000 must have and adhere to a written policy that provides its employees living in San Mateo County up to five days regular pay for actual jury service in the County.

- ☒ Contractor complies with the County's Employee Jury Service Ordinance.
- ☐ Contractor does not comply with the County's Employee Jury Service Ordinance.
- ☐ Contractor is exempt from this requirement because:
- ☐ the contract is for \$100,000 or less.
 - ☐ Contractor is a party to a collective bargaining agreement that began on _____ (date) and expires on _____ (date), and intends to comply when the collective bargaining agreement expires.
 - ☐ Contractor has no employees.
 - ☐ Contractor has no employees who live in San Mateo County.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Signature 

Virgilio Tinio, Jr.
Name

Date 1/9/13

Contracts Administrator
Title