



WIA COST REIMBURSEMENT AGREEMENT

County of Orange

FUNDING SOURCES: 100% FEDERAL

AGREEMENT #:

CFDA #(s): 17.258 WIA Adult Programs

17.260 WIA Dislocated Workers

17.261 WIA Pilots, Demonstrations and Research Projects

THIS AGREEMENT between the County of Orange, hereinafter referred to as "COUNTY", and _____ hereinafter referred to as "CONTRACTOR", consists of fifty-one (51) sections and the following (11) exhibits: A. General Requirements; B. Statement of Work; C. Performance Standards; D. Budget Schedule; E. Drug Free Workplace Certification, F. Suspension & Debarment Certification G. Certification Regarding Lobbying, H. Disclosure Form to Report Lobbying, I. Child Support Enforcement Provision (for-profit providers only), J. Employment Development Department Independent Operator Reporting Requirements, K. OC Community Resources Contract Reimbursement Policy, and L. Santa Monica College Subcontract.

TABLE OF CONTENTS

No.		Page
1.	PURPOSE	5
2.	TERM.....	5
3.	STATEMENT OF WORK.....	6
4.	SERVICES.....	6
5.	BUDGET SCHEDULE	7
6.	MODIFICATION OF BUDGET SCHEDULE	7
7.	PAYMENTS BY COUNTY	7
8.	CONTINGENCY OF FUNDS.....	8
9.	COMPLIANCE WITH LAW	9
10.	INSTRUCTORS.....	9
11.	PERFORMANCE STANDARDS	10
12.	PLANS AND PROCEDURES.....	10
13.	SATISFACTORY WORK.....	10
14.	REPORTS	10
15.	NO SUPPLANTATION	11
16.	INDEPENDENT CONTRACTOR	11
17.	EMPLOYEE ELIGIBILITY VERIFICATION	11
18.	ASSIGNMENT	12
19.	SUBCONTRACTS.....	12
20.	FISCAL ACCOUNTABILITY.....	13
21.	PROGRAM INCOME.....	14
22.	PELL GRANTS/HEA TITLE IV	15
23.	ANNUAL AUDIT	15
24.	ACCESS AND RECORDS	15
25.	FRAUD	16
26.	AMENDMENTS/MODIFICATIONS	16
27.	PARTICIPANTS	18
28.	CONFIDENTIALITY.....	20
29.	EQUIPMENT	20
30.	INDEMNIFICATION.....	22
31.	INSURANCE	22
32.	PATENT/COPYRIGHT MATERIALS/PROPRIETARY INFORMATION	26
33.	INTELLECTUAL PROPERTY	26
34.	CORPORATE STATUS.....	33

35.	STANDARDS OF CONDUCT	33
36.	SWEATFREE CODE OF CONDUCT.....	35
37.	DRUG FREE WORKPLACE	35
38.	DEBARMENT	35
39.	SECTARIAN ACTIVITIES	36
40.	LITERATURE	36
41.	LOBBYING	36
42.	BREACH – SANCTIONS & TERMINATION	37
43.	DISPUTES.....	37
44.	TOTAL AGREEMENT	38
45.	CHILD SUPPORT ENFORCEMENT	38
46.	EDD INDEPENDENT CONTRACTOR REPORTING REQUIREMENTS.....	38
47.	NOTICES.....	39
48.	GOVERNING LAW AND VENUE.....	39
49.	WAIVER	39
50.	PUBLICITY	40
51.	CALENDAR DAYS	40

SIGNATURES

EXHIBITS

- A. General Program Requirements
- B. Statement of Work
- C. Performance Standards and Matrix
- D. Budget Schedule
- E. Drug-Free Workplace Certification
- F. Suspension & Debarment
- G. Certification Regarding Lobbying
- H. Disclosure Form to Report Lobbying
- I. Child Support Enforcement Provision (for profit only providers)
- J. EDD Independent Operator Reporting Requirements
- K. OC Community Resources Contract Reimbursement Policy
- L. Santa Monica Community College Subcontract

RECITALS

WHEREAS, Congress has enacted the "Workforce Investment Act of 1998," hereinafter referred to as "the Act," to provide workforce investment activities, through statewide and local workforce investment systems, that increase employment, retention and earnings of participants, and increase occupational skill attainment by participants, and, as a result, improve the quality of the workforce and enhance the productivity and competitiveness of the Nation; and

WHEREAS, COUNTY has entered into A Subcontract Agreement Between Santa Monica College (SMC) and the County of Orange Resulting from a Grant Agreement to Implement a Community Based Job Training Grant (CFDA 17.269) Between U.S. Department of Labor/Employment and Training Administration (DOLETA) and Santa Monica College (Award Number #: CB-20565-10-60-A06)(the "SMC Agreement") to implement a Community Based Job Training (CBJT) project funded through specified grant funds, and is empowered to make a portion of the grant funds available pursuant to the SMCC Agreement and the grant (hereinafter referred to as "grant funds") to CONTRACTOR, for the purpose of implementing the provisions of the grant as well as the Act; and

WHEREAS, COUNTY, by Minute Order dated, _____, a copy of which is on file with the Clerk of the Board of Supervisors of Orange County and which by this reference is incorporated herein and made a part hereof as if fully set forth, has appropriated a portion of grant funds in an amount not to exceed _____ dollars (\$_____) to engage CONTRACTOR to carry out certain program services; and

WHEREAS, COUNTY'S OC Community Resources Director or designee (hereinafter referred to as "DIRECTOR") shall administer this Agreement as is necessary or reasonable to comply with or implement the grant funds received by COUNTY and as required by law, applicable regulations and the SMC Agreement; and

WHEREAS, CONTRACTOR, in order to receive grant funds, agrees to the terms and conditions hereinafter set forth;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. PURPOSE

The overall purpose of this project is to expand the educational and career ladder that supports the high growth recycling and resource management industry, thus increasing the number of qualified workers available to enter the workforce, targeting all level of the career ladder, while decreasing region-wide unemployment and improving the long-term well-being of the region. The California Works Alliance including SMC and Orange County Workforce Investment Board will achieve this by strengthening an existing industry-recognized certificate and developing two new credentials, including an academic certificate and an Associate of Arts degree in recycling and resource management. In addition to increasing training capacity, this project will support unemployed, dislocated, and incumbent workers as they pursue training and careers in recycling and resource management. All services are intended to improve the quality of the workforce and enhance the productivity and competitiveness of Orange County and the United States. CONTRACTOR shall ensure that the program funded hereby complies with this purpose.

2. TERM

The effective term of this Agreement shall commence on _____ and terminate on May 31, 2013 subject to the provisions of Sections 10 and 44 of this Agreement; however, CONTRACTOR shall be obligated to perform such duties as would normally extend beyond this term, including but not limited to obligations with respect to indemnification, audits, reporting and accounting. CONTRACTOR and DIRECTOR may mutually agree in writing to extend the term of this Agreement up to and including a period of one year, provided that COUNTY's maximum obligation stated in Subparagraph 9 of this Agreement does not increase as a result and on the same terms and conditions upon mutual agreement

of the parties in writing without further Board action, unless the COUNTY earlier terminates this AGREEMENT pursuant to the provisions contained herein.

3. STATEMENT OF WORK

This Agreement is based upon the Statement of Work, attached hereto and incorporated herein as Exhibit B to this Agreement. CONTRACTOR agrees to comply with all provisions, to perform all work, and to provide all services set forth in this Agreement and the aforementioned Statement of Work in a professional, timely and diligent manner. The parties hereto agree that the terms and conditions of the Statement of Work control over all other provisions of this Agreement.

4. SERVICES

CONTRACTOR agrees that those specific program components to be performed by CONTRACTOR, and the service levels to be utilized by COUNTY for program evaluation and monitoring, include, but are not limited to, those set forth in Exhibits "A", "B", and "C" which are attached hereto and incorporated herein as if fully set forth. CONTRACTOR agrees that it is responsible for and guarantees performance of all of the specific program components and service levels listed in Exhibits "A", "B", and "C". CONTRACTOR further agrees that lack of compliance with Exhibits "A", "B", and "C" may, in addition to those remedies set forth in this Agreement, constitute grounds for COUNTY to reduce the level of payment otherwise provided under Section 7 of this Agreement, reduce the payment level and budget at which CONTRACTOR will be funded for the remainder of the term of this Agreement, or terminate this Agreement. Reductions in an amount up to 10% of the total grant fund authorized herein may be made by DIRECTOR. Except as otherwise expressed herein, any reduction over 10% shall require action of the Board of Supervisors.

5. BUDGET SCHEDULE

CONTRACTOR agrees that the expenditures of any and all funds under this Agreement will be in accordance with the BUDGET SCHEDULE, a copy of which is attached hereto as Exhibits "D", and which by this reference is incorporated herein and made a part hereof as if fully set forth.

6. MODIFICATION OF BUDGET SCHEDULE

The BUDGET SCHEDULE consists of the following budget categories: Salaries, Benefits, Operations, Consultant/Subcontract, Office Supplies, Employer Reimbursement (OJT), Participant Wages, Participant Benefits, Participant Supportive Services, Participant Incentives, Equipment, and Indirect. Upon written approval of DIRECTOR, CONTRACTOR shall have the authority to transfer allocated program funds from one category of the overall program budget to any other category of the overall program budget, as long as the amount of the total grant funding is not increased and the basic goals and objectives of the program are not altered. No such transfer may be made without the express prior written approval of DIRECTOR. A modification of the BUDGET SCHEDULE may include the addition of any new budget category as approved by the DIRECTOR. Approval of the budget modification by DIRECTOR includes approval of the new budget category.

7. PAYMENTS BY COUNTY

CONTRACTOR agrees that any and all funds received under this Agreement shall be disbursed or encumbered on or before _____, and that any and all funds remaining as of _____, which have not been disbursed or encumbered shall be returned by CONTRACTOR to COUNTY within thirty (30) days of the expiration or earlier termination of this Agreement. No expense of CONTRACTOR will be reimbursed by COUNTY if incurred after May 31, 2013. No CONTRACTOR expenses shall be reimbursed if billing is received by COUNTY after _____.

Following the effective date of this Agreement, COUNTY shall make reimbursements to CONTRACTOR in accordance with the following payment schedule:

(a) Monthly Payments. Beginning _____, upon receipt and approval by OC Community Services/Community Investment Division (CID) of CONTRACTOR's invoice showing the prior month's actual expenditures, COUNTY shall make monthly reimbursement payments based on CONTRACTOR's invoice so long as the total payments under this Agreement do not exceed _____dollars (\$_____).

(b) COUNTY Discretion. At the sole discretion of COUNTY, upon presentation of proper invoices to the County, reimbursements to CONTRACTOR may be made more frequently than monthly; advances may be made by COUNTY solely for the benefit of the project, at the discretion of DIRECTOR, and upon approval of SMC.

(c) Invoices. COUNTY will reimburse CONTRACTOR for eligible project-related costs only. CONTRACTOR shall submit requests for reimbursement to COUNTY on a monthly (or more frequently under (b)) basis beginning on _____. and must provide adequate documentation as required by COUNTY in accordance with the OC Community Resources Contract Reimbursement Policy, incorporated herein as Exhibit K. Failure to provide any of the required documentation will cause COUNTY to withhold all or a portion of a invoice for reimbursement, or return the entire invoice package to CONTRACTOR, until such documentation has been received and approved by COUNTY.

8. CONTINGENCY OF FUNDS

CONTRACTOR acknowledges that the obligations of COUNTY under this Agreement are contingent upon the availability of Federal and/or State funds, as applicable, and the further disbursement of such funds to COUNTY under the provisions of the SMCC Agreement, for the reimbursement of CONTRACTOR's expenditures, and appropriation of sufficient funds for the services hereunder in the budget approved by COUNTY's Board of Supervisors each fiscal year this Agreement remains in effect. In the event that such funding is terminated or reduced, DIRECTOR may immediately terminate this Agreement, reduce COUNTY's maximum obligation, or modify this Agreement, without penalty. The decision of DIRECTOR shall be binding on CONTRACTOR. DIRECTOR shall provide CONTRACTOR

with written notification of such determination. CONTRACTOR shall immediately comply with DIRECTOR's decision.

9. COMPLIANCE WITH LAW

In its performance under this Agreement, CONTRACTOR shall fully comply with the requirements of the following, all applicable law, including, but not limited to:

(a) The Act and all applicable federal statutes, regulations, policies, procedures and directives, including but not limited to, 20 C.F.R. Parts 652 and 660 through 671.

(1) All applicable standards and orders and requirements issued under Section 306 of the Clean Air Act, Section 508 of the Clean Water Act and Environmental Protection Agency regulations in contracts in excess of \$100,000.

(2) Mandatory standards and policies relating to energy efficiency as particularized in the State Energy Conservation Plan. (Title 20, California Code of Regulations), as required by the U.S. Energy Policy and Conservation Act (P.L. 94-163) as each may now exist or be hereafter amended.

(b) All applicable State statutes, regulations, policies, procedures and directives;

(c) All applicable COUNTY policies, procedures and directives;

(d) All applicable local ordinances and requirements, including use permits and licensing;

(e) Court orders applicable to CONTRACTOR'S operations; and

(f) The terms and conditions of this Agreement, including Exhibits.

If any of the foregoing is enacted, amended, or revised, CONTRACTOR will comply with such or will notify DIRECTOR in writing within thirty (30) days after enactment or modification that it cannot so comply. COUNTY may thereupon terminate this Agreement, if necessary.

10. INSTRUCTORS

CONTRACTOR shall ensure that all instructors involved in the training of participants are qualified to instruct in the appropriate program or training component or curriculum. If necessary, such instructors shall be appropriately certified by the State of California. Within thirty (30) days after the execution of this

Agreement, CONTRACTOR shall submit to DIRECTOR a list of the names and qualifications of all instructors who will be providing such training and shall notify DIRECTOR within five (5) business days of any amendments or revisions thereto.

11. PERFORMANCE STANDARDS

CONTRACTOR shall comply with and adhere to the performance accountability standards and general program requirements described in Sections 136 (Performance Standards) and 195 (General Program Requirements) of the Act and applicable regulations and as contained in Exhibit "C". Should the Performance Requirements defined in the Agreement between the State of California and the County of Orange be changed, COUNTY shall have the right to unilaterally modify this Agreement to meet such requirements.

12. PLANS AND PROCEDURES

CONTRACTOR shall monitor its program for compliance with the provisions of this Agreement. CONTRACTOR shall also comply with all applicable parts of COUNTY's WIA Policies and Procedures for recruitment, intake, assessment and referral, copies of which are available from DIRECTOR. Said Policies and Procedures may be modified by DIRECTOR upon ten (10) days written notice to CONTRACTOR.

13. SATISFACTORY WORK

Services rendered hereunder are to be performed to the written satisfaction of DIRECTOR. COUNTY's staff will interpret all reports and determine the quality, acceptability and progress of the services rendered in accordance with the Performance Criteria listed in Exhibits "C" and "C-1". Inconsistencies in performance will be corrected as they occur and are detected.

14. REPORTS

CONTRACTOR shall maintain records and submit such reports, data and information at such times and in the form required by DIRECTOR, regarding the performance of CONTRACTOR'S services,

activities, costs or other data relating to this Agreement. DIRECTOR may modify the provisions of this paragraph without further Board action upon written notice to CONTRACTOR.

15. NO SUPPLANTATION

CONTRACTOR shall not supplant any Federal, State or COUNTY funds intended for the purposes of this Agreement with any funds made available under this Agreement. CONTRACTOR shall not claim reimbursement from COUNTY for, or apply sums received from COUNTY with respect to, that portion of its obligations which have been paid by another source of revenue. CONTRACTOR agrees that it shall not use funds received pursuant to this Agreement, either directly or indirectly, as a contribution or compensation for purposes of obtaining Federal, State or COUNTY funds under any Federal, State or COUNTY program without prior written approval of DIRECTOR.

16. INDEPENDENT CONTRACTOR

CONTRACTOR is and shall at all times be deemed to be, an independent contractor and shall be wholly responsible for the manner in which it performs the services required of it by the terms of this Agreement. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between COUNTY and CONTRACTOR or any of CONTRACTOR'S agents or employees. CONTRACTOR assumes exclusively the responsibility for the acts of its employees or agents as they relate to services to be provided during the course and scope of their employment. CONTRACTOR, its agents, employees and volunteers, shall not be entitled to any rights and/or privileges of COUNTY employees, and shall not be considered in any manner to be COUNTY employees.

17. EMPLOYEE ELIGIBILITY VERIFICATION

The CONTRACTOR warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Agreement meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The CONTRACTOR shall obtain, from all employees performing work hereunder, all

verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The CONTRACTOR shall retain all such documentation for all covered employees for the period prescribed by the law. The CONTRACTOR shall indemnify, defend with counsel approved in writing by COUNTY, and hold harmless, the COUNTY, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the CONTRACTOR or the COUNTY or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Agreement.

18. ASSIGNMENT

The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of the CONTRACTOR. No portion of this Agreement shall be assigned without the express written consent of COUNTY. Any attempt by CONTRACTOR to assign any portion of this Agreement without the express written consent of COUNTY shall be invalid and shall constitute a breach of this Agreement.

19. SUBCONTRACTS

CONTRACTOR shall not subcontract for services under this Agreement without the prior written consent of DIRECTOR. If DIRECTOR consents in writing to a subcontract, in no event shall the subcontract alter, in any way, any legal responsibility of CONTRACTOR to COUNTY. DIRECTOR may refuse to pay obligations incurred under any subcontract that does not comply with the terms of this Agreement. All subcontracts must be in writing and copies of same shall be provided to DIRECTOR within thirty (30) days of execution. CONTRACTOR shall include in each subcontract any provision DIRECTOR may require

CONTRACTOR shall ensure that all subcontracts for services and contracted staff are procured in a manner consistent with all applicable Federal, State and local guidelines. Description of the intended

method of procurement must be included as part of the budget which is included as Exhibits “D” and “D-1” of this Agreement. CONTRACTOR shall itemize all subcontractor and contracted staff costs in the budget so it is clear how the funds will be allocated and spent by each subcontractor. By entering into this Agreement CONTRACTOR agrees that it is the direct provider of services.

20. FISCAL ACCOUNTABILITY

(a) Financial Management System. CONTRACTOR shall establish and maintain a sound financial management system, based upon generally accepted accounting principles. CONTRACTOR’s system shall provide fiscal control and accounting procedures that will include the following:

- (1) Information pertaining to subgrant and contract awards, obligations, unobligated balances, assets, expenditures, and income;
- (2) Effective internal controls to safeguard assets and assure their proper use;
- (3) A comparison of actual expenditures with budgeted amounts for each subgrant and contract;
- (4) Source documentation to support accounting records; and
- (5) Proper charging of costs and cost allocation.

(b) CONTRACTOR’s Records. CONTRACTOR’s records shall be sufficient to:

- (1) Permit preparation of required reports;
- (2) Permit the tracking of funds to a level of expenditure adequate to establish that funds have not been used in violation of the applicable restrictions on the use of such funds; and
- (3) Permit the tracking of program income, or profits earned, and any costs incurred (such as stand-in costs) that are otherwise allowable except for funding limitations.

(c) Costs Charged. Costs shall be charged to this Agreement only in accordance with the following:

- (1) the Act;
- (2) 20 C.F.R. Part 667; and
- (3) State implementing legislation.

21. PROGRAM INCOME

COUNTY's maximum obligation hereunder shall be reduced by the amount of any Program Income as defined by the Act, earned by CONTRACTOR, from sources other than COUNTY, as a result of this Agreement or the services provided by CONTRACTOR pursuant to this Agreement. It shall be the responsibility of CONTRACTOR to inform the COUNTY in writing of any income earned as a result of this Agreement.

It is mutually understood that the State or Federal agency responsible for providing the funding for this Agreement may designate certain revenue of CONTRACTOR as Program Income. To be designated as Program Income and, therefore, as other than a cost off-set, CONTRACTOR shall do all of the following:

- (a) Submit a plan to the DIRECTOR for use of any and all proposed Program Income;
- (b) Set-up and maintain a separate bank account for any proposed Program Income and account for any and all such income received; and
- (c) Report to DIRECTOR any and all Program Income received no later than thirty (30) days from the date of receipt; record the amount received on internal financial records; and indicate the amount received on the monthly claim submitted to DIRECTOR.

DIRECTOR shall then forward the plan for the requested use of the proposed Program Income to the appropriate State and/or Federal agencies for approval.

CONTRACTOR shall not spend any of the proposed Program Income unless or until such time as DIRECTOR obtains authorization for the use of the Program Income from the responsible State and/or Federal agency and provides CONTRACTOR with prior written approval for the use of the funds.

DIRECTOR may, in its sole discretion, issue future policy statements and/or instructions with respect to Program Income. CONTRACTOR shall immediately comply with such policy statements and/or instructions.

22. PELL GRANTS/HEA TITLE IV

If CONTRACTOR provides any services under this Agreement to applicants for or recipients of Pell Grants or awards pursuant to Title IV of the Higher Education Act, CONTRACTOR shall cooperate with DIRECTOR in coordinating these grants and awards with WIA funding in accordance with 20 C.F.R. 663.320 and Section 134 (d) of the Act. CONTRACTOR shall inform DIRECTOR in writing of the amounts and disposition of any Pell Grants, Higher Education Act Title IV awards and other financial aid granted to each WIA participant under this Agreement.

23. ANNUAL AUDIT

CONTRACTOR shall arrange for an independent audit to be performed by a Certified Public Accountant, which shall include an audit of the WIA funds received from COUNTY, in accordance with the Act and 20 C.F.R. Section 667.200. CONTRACTOR shall submit two (2) copies of each required audit report to COUNTY within thirty (30) days after the date received by CONTRACTOR.

24. ACCESS AND RECORDS

(a) Access. COUNTY, the State of California and the United States Government and/or their representatives, shall have access, for purposes of monitoring, auditing, and examining, to CONTRACTOR's activities, books, documents and papers (including computer records and emails) and to records of CONTRACTOR's subcontractors, consultants, contracted employees, bookkeepers, accountants, employees and participants related to this Agreement. CONTRACTOR shall insert this condition in each agreement between CONTRACTOR and a subcontractor that is pursuant to this Agreement shall require the subcontractor to agree to this condition. Such agencies or representatives shall have the right to make excerpts, transcripts and photocopies of such records and to schedule on site monitoring at their discretion. Monitoring activities also may include, but are not limited to, questioning employees and participants and entering any premises or onto any site in which any of the services or activities funded hereunder are conducted or in which any of the records of CONTRACTOR are kept. CONTRACTOR shall make available its books, documents, papers, financial records, etc., within three (3)

days after receipt of written demand by DIRECTOR which shall be deemed received upon date of sending. In the event CONTRACTOR does not make the above referenced documents available within the County of Orange, California, CONTRACTOR agrees to pay all necessary and reasonable expenses incurred by COUNTY, or COUNTY's designee, in conducting any audit at the location where said records and books of account are maintained.

(b) Records Retention. All accounting records and evidence pertaining to all costs of CONTRACTOR and all documents related to this Agreement shall be kept available at CONTRACTOR's office or place of business for the duration of this Agreement and thereafter for four (4) years after completion of an audit. Records which relate to (1) complaints, claims, administrative proceedings or litigation arising out of the performance of this Agreement, or (2) costs and expenses of this Agreement to which COUNTY or any other governmental agency takes exception, shall be retained beyond the four (4) years until final resolution or disposition of such appeals, litigation, claims, or exceptions.

(c) CONTRACTOR shall pay to COUNTY the full amount of COUNTY's liability to the State or Federal government or any agency thereof resulting from any disallowance or other audit exceptions to the extent that such liability is attributable to CONTRACTOR's failure to perform under this Agreement.

25. FRAUD

CONTRACTOR shall immediately report all suspected or known instances and facts concerning possible fraud, abuse or criminal activity under this Agreement, or in any connection with the delivery or receipt of services.

26. AMENDMENTS/MODIFICATIONS

(a) DIRECTOR may at any time, by written order to CONTRACTOR, within the general scope of this Agreement, amend the services and tasks to be performed, the manner in which services are performed, the time and place of performance thereof and additional related provisions. Such amendments may be made when necessitated by changes in the Orange County One-Stop System operations or performance, the operations or performance of CONTRACTOR, or changes in applicable

statutes, regulations or State of California or Federal mandates or directives. CONTRACTOR may submit a program or budget modification request in response to change orders which significantly alter CONTRACTOR's Statement of Work. Without further Board action and with the approval of SMC under the SMC Agreement, DIRECTOR may execute amendments to this Agreement modifying CONTRACTOR's services in amounts that do not collectively increase or decrease by more than 10% the price of said services under this Agreement when originally executed. Modifications in excess of 10% of the original Agreement price, and modifications that materially alter either of the parties' obligations hereunder must be approved by the COUNTY's Board of Supervisors. CONTRACTOR and DIRECTOR shall make a good faith effort to reach an agreement with respect to amendments, which affect the price of services under the Agreement. CONTRACTOR's protest or failure to agree to the amount of any adjustment to be made as a result of an amendment shall be a dispute for which an appeal may be made pursuant to Section 43 of this Agreement. Notwithstanding the foregoing, the price of services under this Agreement shall not be increased except by written amendment to this Agreement indicating the new services and price of this Agreement if applicable. Until the parties reach agreement, CONTRACTOR shall not be obligated to assume increased performance under the amendment beyond the limitation of funds established within this Agreement.

(b) CONTRACTOR may request amendments to the scope of performance or services under this Agreement, by submitting a written request to DIRECTOR describing the request and its impact on the Statement of Work and Budget Schedule. DIRECTOR will review the request and respond in writing within ten (10) business days. Requests shall be reviewed in light of all CID program activities. DIRECTOR's decision whether to approve the request or request Board of Supervisors' approval shall be final. DIRECTOR may approve a request that meets all of the following criteria:

- (ii) It does not materially change other terms of this Agreement, and
- (iii) It is supported by adequate consideration to COUNTY.

Board of Supervisors' action is necessary to approve an amendment request from CONTRACTOR that does not satisfy all of the criteria listed above.

(c) The parties hereto agree that the program components, service levels, and line-item budget information detailed in Exhibits "A", "B", "C", and "D" may be modified upon mutual written agreement of the DIRECTOR and CONTRACTOR so long as the total grant fund payments under this Agreement are not increased, all payments remain qualified for WIA and DOL funding and the basic goals and objectives of the program are not altered. Should the United States Department of Labor, the State of California, or SMCC modify any program component and/or service level detailed in Exhibits "A", "B", "C", and/or "D" then the COUNTY shall have the right to unilaterally modify this Agreement to meet such requirements.

27. PARTICIPANTS

(a) Benefits. CONTRACTOR shall provide wages and benefits to individuals who participate in the activities and services funded by this Agreement ("participants") in accordance with the standards and requirements of the Act, including Section 181 of the Act.

(b) Labor Standards. CONTRACTOR shall adhere to the Labor Standards described in the Act, including Section 181 of the Act, and all other applicable codes and regulations.

(c) Complaint Handling Procedures. CONTRACTOR shall comply with the "Complaint Handling Procedures" under the Act, a copy of which is available from the DIRECTOR. CONTRACTOR shall advise participants of their right to file complaints under the Act and of the procedures for resolution of any complaints. CONTRACTOR shall follow COUNTY's procedures for handling complaints which is available from the DIRECTOR alleging a violation of the Act, regulations, grants or other agreements under the Act, and any decision of the COUNTY, the State or the Federal government relating to the complaint shall be binding on and shall be followed by CONTRACTOR.

(d) Nondiscrimination and Compliance Provisions

(1) CONTRACTOR shall comply fully with the nondiscrimination and equal opportunity provisions of the Act (Section 188); the Nontraditional Employment for Women Act of 1991; Title VI of the Civil Rights Act of 1964, as amended; section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; the Americans with Disabilities Act of 1990; Title IX of the

Education Amendments of 1972, as amended; the Equal Opportunity provisions in Executive Order 11246, as amended by Executive Order 11375 and supplemented by the requirements of 41 C.F.R. Part 60; and with all applicable requirements imposed by or pursuant to regulations or Executive Order implementing those laws, including, but not limited to, 29 C.F.R. Part 37. The United States, the State of California and COUNTY have the right to seek judicial enforcement of this requirement.

(2) CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (California Government Code, Section 12900 et seq.) and the regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

(3) In the performance of this Agreement, CONTRACTOR and its subcontractors shall not deny the Agreement's benefits to any person on the basis of race, ancestry, national origin, religion, color, ethnic group identification, sex, age, mental or physical disability (including HIV and AIDS), medical condition (including cancer), marital status, denial of family care leave, political affiliation or belief, nor will they unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of race, ancestry, national origin, religion, color, ethnic group identification, sex, age, mental or physical disability (including HIV and AIDS), medical condition (including cancer), marital status, denial of family care leave, political affiliation or belief. CONTRACTOR shall insure that the evaluation and treatment of employees and applicants for employment are free from such discrimination and harassment.

(4) CONTRACTOR will include the non-discrimination and compliance provisions of this Section of the Agreement in all subcontracts to perform work under this Agreement.

(5) CONTRACTOR will give written notice of its obligations under this Section of the Agreement to labor organizations with which CONTRACTOR has a collective bargaining or other agreement.

(6) CONTRACTOR shall furnish any and all information requested by DIRECTOR and shall permit DIRECTOR access, during business hours, to books, records and accounts in order to ascertain CONTRACTOR's compliance with the above non-discrimination requirements.

28. CONFIDENTIALITY

(a) Without prejudice to any other section of this Agreement, CONTRACTOR shall, where applicable, maintain the confidential nature of information provided to it concerning participants in accordance with the requirements of Federal and State law. However, CONTRACTOR shall submit to COUNTY, the State of California and/or the United States Government or their representatives, all records requested for administrative purposes, including audit, examinations, monitoring and verification of reports submitted by CONTRACTOR, costs incurred and services rendered hereunder.

(b) CONTRACTOR shall require all of its employees, agents, subcontractors and volunteer staff who may provide services to CONTRACTOR under this Agreement to sign an agreement with CONTRACTOR before commencing the provision of any such services, to maintain the confidentiality of any and all materials and information with which they may come into contact, or the identities or any identifying characteristics or information with respect to any and all participants referred to CONTRACTOR by COUNTY, except as may be required to provide services under this Agreement or to those specified in this Agreement as having the capacity to audit CONTRACTOR, and as to the latter, only during such audit. CONTRACTOR shall provide reports and any other information required by COUNTY in the administration of this Agreement, and as otherwise permitted by law.

(c) CONTRACTOR agrees that any and all subcontracts entered into shall be subject to the confidentiality requirements of this Agreement.

29. EQUIPMENT

All items purchased with funds provided under this Agreement or which are furnished to CONTRACTOR by COUNTY which have a single unit cost of at least five thousand dollars (\$5,000), including all taxes, shipping, handling and installation costs shall be considered Equipment. Title to all

items of Equipment purchased vests and will remain in COUNTY as such shall be designated by DIRECTOR. The use of such items of Equipment is limited to the performance of this Agreement. Upon the termination of this Agreement, CONTRACTOR shall immediately return any items of Equipment to COUNTY or its representatives, or dispose of them in accordance with the directions of DIRECTOR.

CONTRACTOR further agrees to the following:

(a) To maintain all items of Equipment in good working order and condition, except for normal wear and tear.

(b) To label all items of Equipment, do periodic inventories as required by DIRECTOR and to maintain an inventory list showing where and how the Equipment is being used, in accordance with procedures developed by DIRECTOR. All such lists shall be submitted to DIRECTOR within ten (10) days of the request therefore. Inventory lists must be maintained for four (4) years after final disposition of property.

(c) To report in writing to DIRECTOR immediately after discovery, the loss or theft of any items of Equipment. For stolen items, the local law enforcement agency must be contacted and a copy of the police report submitted to DIRECTOR.

(d) To purchase a policy or policies of insurance covering loss or damage to any and all Equipment purchased under this Agreement, in the amount of the full replacement value thereof, providing protection against the classification of fire, extended coverage, vandalism, malicious mischief and special extended perils (all risks) covering the parties' interests as they appear.

(e) The purchase of any Equipment by CONTRACTOR shall be requested by CONTRACTOR in writing, shall require the prior written approval of DIRECTOR, and shall fulfill the provisions of this Agreement which are appropriate and directly related to CONTRACTOR's service or activity under the terms of this Agreement. COUNTY may refuse reimbursement for any costs resulting from Equipment purchased, which are incurred by CONTRACTOR, if prior written approval has not been obtained from DIRECTOR.

(f) The purchase of computer-related and electronic equipment under \$5,000, including, but not limited to laptops, desktop computers, cell phones, PDAs, cameras, and DVD players, must be approved by DIRECTOR.

30. INDEMNIFICATION

(a) CONTRACTOR agrees to indemnify, defend with counsel approved in writing by COUNTY, and hold COUNTY, the State of California, and the Orange County Workforce Investment Board, their elected and appointed officials, officers, employees, agents and those special districts and agencies which COUNTY's Board of Supervisors acts as the governing Board ("COUNTY INDEMNITEES") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by CONTRACTOR pursuant to this Agreement.

(b) COUNTY agrees to indemnify and hold CONTRACTOR, and its elected and appointed officials, officers, and employees harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by COUNTY pursuant to this Agreement.

(c) If judgment is entered against CONTRACTOR by a court of competent jurisdiction because of the active negligence of CONTRACTOR, CONTRACTOR and COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

(d) If judgment is entered against COUNTY by a court of competent jurisdiction because of the active negligence of COUNTY/COUNTY INDEMNITEES, CONTRACTOR and COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

31. INSURANCE

(a) Prior to the provision of services under this Agreement, the CONTRACTOR agrees to purchase all required insurance at CONTRACTOR's expense and to deposit with DIRECTOR Certificates of Insurance, including all endorsements required herein, necessary to satisfy COUNTY that the insurance

provisions of this Agreement have been complied with and to keep such insurance coverage and the certificates therefore on deposit with DIRECTOR during the entire term of this Agreement. In addition, all subcontractors performing work on behalf of CONTRACTOR pursuant to this Agreement shall obtain insurance subject to the same terms and conditions as set forth herein for CONTRACTOR.

(b) All insurance policies required by this Agreement shall declare any deductible or self-insured retention (SIR) in an amount in excess of \$25,000 (\$5,000 for automobile liability), which shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management. CONTRACTOR shall be responsible for reimbursement of any deductible to the insurer. Any self-insured retentions (SIRs) or deductibles shall be clearly stated on the Certificate of Insurance. If the CONTRACTOR fails to maintain insurance acceptable to the COUNTY for the full term of this Agreement, the COUNTY may terminate this Agreement.

(c) If CONTRACTOR is a governmental entity, CONTRACTOR may elect to self-insure for the insurance coverage required by this Agreement.

(d) The policy or policies of insurance required herein must be issued by an insurer licensed to do business in the State of California (California Admitted Carrier). If the insurer is not licensed to do business in the State of California, CEO/Office of Risk Management retains the right to approve or reject the insurer after a review of the insurer's performance and financial ratings.

(e) The policy or policies of insurance required herein must be issued by an insurer with a minimum rating of "A- (Secure Best's Rating)" and a minimum financial rating of "VIII (Financial Size Category)," as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or by going on-line to "ambest.com."

(f) The policy or policies of insurance maintained by CONTRACTOR shall provide the minimum limits and coverage as set forth below:

Coverage	Minimum Limits
Commercial General Liability with Broad Form Property Damage	\$1,000,000 combined single limit per occurrence

Endorsement and Contractual Liability	\$2,000,000 Aggregate
Automobile Liability including all owned, non-owned and hired vehicles	\$1,000,000 combined single limit per occurrence
Workers' Compensation	Statutory
Employer's Liability	\$1,000,000 per occurrence
Sexual Misconduct	\$1,000,000 per occurrence

(g) All liability insurance required by this Agreement shall be at least \$1,000,000 combined single limit per occurrence. The minimum aggregate limit for the Commercial General Liability policy shall be \$2,000,000.

(h) The County of Orange, Orange County Workforce Investment Board, and State of California shall be added as additional insureds on all insurance policies required by this Agreement with respect to the services provided by CONTRACTOR under the terms of this Agreement (except Workers' Compensation/Employers' Liability). An additional insured endorsement evidencing that the County of Orange is an additional insured shall accompany the Certificate of Insurance.

(i) All insurance policies required by this Agreement shall be primary insurance, and any insurance maintained by the County of Orange shall be excess and non-contributing with insurance provided by these policies. An endorsement evidencing that CONTRACTOR's insurance is primary and non-contributing shall specifically accompany the Certificate of Insurance for the Commercial General Liability and Sexual Misconduct Insurance.

(j) All insurance policies required by this Agreement shall give the County of Orange 30 days notice in the event of cancellation. This shall be evidenced by an endorsement separate from the Certificate of Insurance. In addition, the cancellation clause must include language as follows, which edits the pre-printed ACORD certificate:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT.

(k) All insurance policies required by this Agreement shall waive all rights of subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their employment or appointment.

(l) The Commercial General Liability policy shall contain a severability of interests clause.

(m) CONTRACTOR is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation or be self-insured in accordance with provisions of that code. CONTRACTOR will comply with such provisions and shall furnish COUNTY satisfactory evidence that CONTRACTOR has secured, for the period of this Agreement, statutory Workers' Compensation insurance and Employers' Liability insurance with minimum limits of \$1,000,000 per occurrence.

(n) If CONTRACTOR fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Risk Management or by DIRECTOR, award may be made to the next qualified proponent.

(o) COUNTY expressly retains the right to require CONTRACTOR to increase or decrease insurance of any of the above insurance types throughout the term of this Agreement. Any increase or decrease in insurance will be as deemed by CEO/Risk Management as appropriate to adequately protect COUNTY.

(p) COUNTY shall notify CONTRACTOR in writing of changes in the insurance requirements. If CONTRACTOR does not deposit copies of acceptable certificates of insurance and endorsements with DIRECTOR incorporating such changes within thirty (30) days of receipt of such notice, this Agreement may be in breach without further notice to CONTRACTOR, and COUNTY shall be entitled to all legal remedies.

(q) The procuring of such required policy or policies of insurance shall not be construed to limit CONTRACTOR's liability hereunder or to fulfill the indemnification provisions and requirements of this Agreement.

(r) The County of Orange Certificate of Insurance and the Special Endorsement for the County of Orange can be utilized to verify compliance with the above-mentioned insurance requirements in place of commercial insurance certificates and endorsements.

32. PATENT/COPYRIGHT MATERIALS/PROPRIETARY INFORMATION

CONTRACTOR agrees to grant the COUNTY, Federal and State governments a royalty-free, nonexclusive and irrevocable license to publish, copy, translate or use, now and hereafter, all materials, data, films, tapes, etc., developed under this Agreement including those covered by copyright. The COUNTY, Federal, and State governments reserve the right to authorize others to use or reproduce such materials. Further, the COUNTY, Federal, and State governments shall have access to any report, preliminary findings or data assembled by CONTRACTOR under this Agreement and shall retain ownership and patent rights to any discovery or invention under this Agreement, as provided in 29 CFR 97.34 and 97.36(i)(8&9).

33. INTELLECTUAL PROPERTY

(a) 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. CONTRACTOR agrees to grant the COUNTY, Federal and State governments a royalty-free, non-exclusive, irrevocable, paid-up license throughout the world to use, duplicate, or dispose of such Intellectual Property throughout the world in any manner for governmental purposes and to have and permit others to do so.

(b) Ownership.

(1) Except where 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 and which result directly or indirectly from this Agreement.

(2) 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, country or jurisdiction.

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

(3) In the performance of this 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 Agreement. 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 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.

(4) 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 thirty-four (34) (a) through thirty-four (i). Such terms must include, but are not limited to, the subcontractor 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 subcontractor, CONTRACTOR or COUNTY and which result directly or indirectly from this Agreement or any subcontract.

(5) Pursuant to paragraph thirty-four (34) (b) (4) of the Intellectual Property Provisions of this Agreement, the requirement for the CONTRACTOR to include all Intellectual Property Provisions of paragraph thirty four (a) through thirty-four (i) of the Intellectual Property Provisions in all agreements and subcontracts it enters into with other parties does not apply to agreements or subcontracts that are for customized and on-the-job training as authorized under 20 CFR 663.700-730.

(6) 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.

(c) Retained Rights/License Rights.

(1) 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 Agreement, unless CONTRACTOR assigns all rights, title and interest in the Intellectual Property as set forth herein.

(2) Nothing in this provision shall restrict, limit, or otherwise prevent CONTRACTOR from using any ideas, concepts, know-how, methodology or techniques related to its performance under this Agreement, 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 paragraphs thirty four (a) through thirty-four (i) or result in a breach of any provisions of law relating to confidentiality.

(d) Copyright.

(1) CONTRACTOR agrees that for purposes of copyright law, all works (as defined in Ownership, paragraph thirty-four (b) (2) (i) 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 a "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 or COUNTY and which result directly or indirectly from this Agreement.

(2) 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 COUNTY.

(e) 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 thirty four (c) for devices or material incorporating, or made through the use of such inventions. If such inventions result from research and development work specifically included within the 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.

(f) 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 thirty-four (c), 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.

(g) Warranties.

(1) CONTRACTOR represents and warrants that:

(i) CONTRACTOR has secured and will secure all rights and licenses necessary for its performance of this Agreement.

(ii) 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 or COUNTY 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 are currently no actual or threatened claims by any such third party based on an alleged violation of any such right by CONTRACTOR.

(iii) Neither CONTRACTOR's performance nor any part of its performance will violate the right of privacy of, or constitute a libel or slander against any person or entity.

(iv) CONTRACTOR has secured and will secure all rights and licenses necessary for Intellectual Property including, but not limited to, consents, waivers or releases from all authors 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.

(v) CONTRACTOR 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.

(vi) CONTRACTOR 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.

(vii) CONTRACTOR 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.

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

(h) Intellectual Property Indemnity.

(1) CONTRACTOR shall indemnify, defend and hold harmless 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 Agreement. COUNTY reserves the right to participate in and/or control, at CONTRACTOR's expense, any such infringement action brought against COUNTY.

(2) 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 reasonably 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 replaced or modified Intellectual Property becomes non-infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, COUNTY may be entitled to a refund of all monies paid under this Agreement, without restriction or limitation of any other rights and remedies available at law or in equity.

(3) CONTRACTOR agrees that damages alone would be inadequate to compensate COUNTY for breach of any term of these Intellectual Property provisions of paragraphs thirty three (a) through thirty-four (i) 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.

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

34. CORPORATE STATUS

All corporate CONTRACTORS shall be registered with the California Secretary of State and shall be in good standing, without suspension by the California Secretary of State, Franchise Tax Board, or Internal Revenue Service. Any change in corporate status or suspension shall be reported by CONTRACTOR immediately in writing to DIRECTOR.

35. STANDARDS OF CONDUCT

(a) General Assurance. Every reasonable course of action will be taken by 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. CONTRACTOR, its officers 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.

(b) Employment of Former State or COUNTY Employees. CONTRACTOR will ensure that any of its employees who were formerly employed by the State of California or the County of Orange, 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 (2) 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 CONTRACTOR will receive favorable treatment when considered for enrollment in programs provided by, or employment with, CONTRACTOR.

(d) Conducting Business Involving Close Personal Friends and Associates. Executives and employees of CONTRACTOR will be particularly aware of the varying degrees of influence that can be exerted by personal friends and associates and, in administering this Agreement, will exercise due diligence to avoid situations which give rise to an assertion that favorable treatment is being granted to friends and associates.

(e) Avoidance of Conflict of Economic Interest. No executive or employee of CONTRACTOR, elected official in the area, or voting or non-voting member of a WIB, will solicit or accept money or any other consideration from a third person, for the performance of an act reimbursed in whole or part by CONTRACTOR or COUNTY. Supplies, materials, equipment or services purchased with Agreement funds will be used solely for purposes allowed under this Agreement. No voting member of the OCWIB 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 any business or organization which the member directly represents.

36. SWEATFREE CODE OF CONDUCT

All CONTRACTORS contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, or supplies have been furnished to the Contractor from sources that include sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The CONTRACTOR further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.

The CONTRACTOR agrees to cooperate fully in providing reasonable access to the CONTRACTOR's records, documents, agents or employees, or premises if reasonably required by authorized officials of the State or COUNTY, the Department of Industrial Relations, or the Department of Justice to determine the CONTRACTOR's compliance with the requirements under paragraph a of the Sweatfree Code of Conduct.

37. DRUG FREE WORKPLACE

CONTRACTOR shall execute and abide by the Drug Free Workplace Certification attached hereto as Exhibit "E" and incorporated herein by this reference.

38. DEBARMENT

CONTRACTOR shall execute and abide by the Debarment & Suspension Certification attached hereto as Exhibit "F" and incorporated herein by this reference and by so doing declares that it is not debarred or suspended or otherwise excluded from or ineligible for participation in Federal/State assistance programs in accordance with 29 C.F.R. Part 98.

39. SECTARIAN ACTIVITIES

CONTRACTOR agrees that this Agreement will not provide for the advancement or aid to any religious sect, church or creed for a purpose that is sectarian in nature, nor will it help to support or sustain any school, college, university, hospital or other institution controlled by any religious creed, church, or sectarian denomination. However, in accordance with Presidential Executive Order No. 13279, issued December, 2002, CONTRACTOR shall also provide and promote equal treatment to all faith-based organizations in administering its federally-funded activities.

40. LITERATURE

Any literature distributed by CONTRACTOR for the purpose of apprising businesses, participants, or the general public of its programs under this Agreement shall state that its programs are supported by the County of Orange and the Orange County Workforce Investment Board, and shall state that the program is an "equal opportunity employer/program" and that "auxiliary aids and services are available upon request to individuals with disabilities."

41. LOBBYING

(a) CONTRACTOR shall execute and abide by the terms of the "Certification Regarding Lobbying," which is attached hereto as Exhibit "G" and incorporated herein by this reference. CONTRACTOR shall complete and immediately forward to DIRECTOR the "Disclosure Form to Report Lobbying," a copy of which is attached hereto as Exhibit "H", incorporated herein by this reference, if CONTRACTOR, or any person, firm or corporation acting on CONTRACTOR's behalf, engaged or engages in lobbying any federal officer, employee, elected official or agency with respect to this Agreement or the funds to be received by CONTRACTOR pursuant to this Agreement.

(b) CONTRACTOR agrees that the funds provided herein shall not be used to promote, directly or indirectly, any political party, political candidate or political activity, except as permitted by law.

42. BREACH – SANCTIONS & TERMINATION

(a) If, through any cause, CONTRACTOR violates any of the terms and conditions of this Agreement, or any prior Agreements whereby grant funds were received by CONTRACTOR, or if CONTRACTOR reports inaccurately, or if an audit report makes disallowances, CONTRACTOR shall promptly remedy its acts or omissions and/or repay COUNTY all amounts due COUNTY as a result thereof. For any such failures or violations COUNTY shall also have the right, at its sole discretion, to: (1) immediately discontinue program until such time as CONTRACTOR fulfills its obligations or remedies all violations of this Agreement or prior Agreements; and/or (2) collect outstanding amounts, as determined by DIRECTOR to be due COUNTY from CONTRACTOR, by offsetting or debiting from current claims or invoices, if after thirty (30) days written notice CONTRACTOR has failed to repay same or a repayment schedule has not been made; and/or (3) terminate this Agreement as provided herein. DIRECTOR shall give CONTRACTOR written notice of any action pursuant to this paragraph, which notice shall be deemed given on the date of mailing.

(b) DIRECTOR may terminate this Agreement without penalty immediately with cause or after thirty (30) days written notice without cause, unless otherwise specified. Notice shall be deemed served on the date of mailing. Cause is defined as any breach of this Agreement, any misrepresentation or fraud on the part of the CONTRACTOR. Exercise by DIRECTOR of the right to terminate this Agreement shall relieve COUNTY of all further obligations under this Agreement.

(c) Upon termination, or notice thereof, CONTRACTOR agrees to cooperate with DIRECTOR in the orderly transfer of service responsibilities, active case records, pertinent documents and all equipment or materials purchased with grant funds.

43. DISPUTES

Except as otherwise provided in this Agreement, any dispute concerning any question arising after the commencement of this Agreement shall be decided by DIRECTOR. In such a case, DIRECTOR shall reduce its decision to writing and mail or otherwise furnish a copy thereof to CONTRACTOR. The

decision of DIRECTOR shall be final and conclusive unless within thirty (30) calendar days from the mailing or delivery of such copy, DIRECTOR receives from CONTRACTOR a written request to appeal said decision to the COUNTY Board of Supervisors. Pending final decision of the appeal, CONTRACTOR shall act in accordance with the written decision of DIRECTOR.

44. TOTAL AGREEMENT

This Agreement, together with Exhibits A through K attached hereto, the SMC Agreement included as Exhibit L, all incorporated herein expresses the total understanding of the parties. There are no oral understandings of the parties or terms and conditions other than as are stated herein. CONTRACTOR acknowledges that it has read and agrees to all terms and conditions included in this Agreement.

45. CHILD SUPPORT ENFORCEMENT

In order to comply with child support enforcement requirements of the County of Orange, CONTRACTOR shall execute and abide by the "Child Support Enforcement Provision" (for profit only providers) attached hereto as Exhibit "I" and incorporated herein by this reference within thirty (30) days of award of contract.

Failure of CONTRACTOR to timely submit the data and/or certifications required above or to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of this Agreement. Failure to cure such breach within sixty (60) days of notice from COUNTY shall constitute grounds for termination of this Agreement.

46. EDD INDEPENDENT CONTRACTOR REPORTING REQUIREMENTS

CONTRACTOR shall execute and abide by the "EDD Independent Contractor Reporting Requirements Certification" attached hereto as Exhibit "J" and incorporated herein by this reference.

47. NOTICES

All notices, reports and correspondence between the parties hereto respecting this Agreement shall be in writing and deposited in the United States Mail, postage prepaid, addressed as follows:

COUNTY: OC Community Resources
OC Community Services / Community Investment Division
1300 South Grand Avenue
Building "B"
Santa Ana, California 92705

CONTRACTOR:

48. GOVERNING LAW AND VENUE

This Agreement has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.

49. WAIVER

No delay or omission by either party hereto to exercise any right or power accruing upon any noncompliance or default by the other party with respect to any of the terms of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions, or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein contained.

50. PUBLICITY

Information and solicitations, prepared and released by CONTRACTOR, concerning the services provided under this Agreement, shall state that the program, wholly or in part, is funded by the County of Orange and the Orange County Workforce Investment Board.

51. CALENDAR DAYS

Any reference to the word “day” or “days” herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.

IN WITNESS WHEREOF, the parties hereto certify that they have read and understand all the terms and conditions contained herein and have duly authorized and caused this Agreement to be executed as of the date stated below written.

"COUNTY OF ORANGE a political
Subdivision of the State of California"

Dated: _____

By: _____
Steve Franks
Director, OC Community Resources

"CONTRACTOR"*

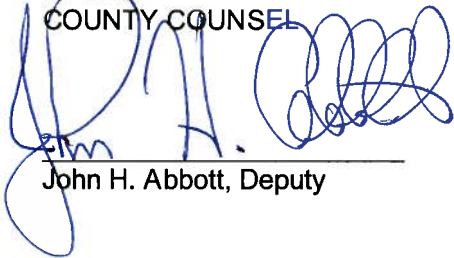
Dated: _____

By: _____

Title: _____

*[Authorized signatures for corporations. Requirement of two signatures as follows: (1) One signature by the Chairman of the Board, the President or any Vice President, and (2) one signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or an Assistant Treasurer. For contractors that are not corporations, a person who has the authority to bind the contractor to a contract.]

APPROVED AS TO FORM
COUNTY COUNSEL



John H. Abbott, Deputy