

SERVICES AGREEMENT

Service Agreement

This services agreement (“Agreement”) is made by and between the San Diego Workforce Partnership, Inc., a California nonprofit public benefit corporation (“SDWP”), and **Contractor's Legal Name**, a **Insert type of corporation** (“Contractor”), as of **Month Day, YYYY** (the “Effective Date”).

- A. Contractor is **insert type of entity and services that they provide**;
- B. Contractor was procured through a **Request for Quote (RFQ)** process and approved by the **San Diego Consortium Policy Board** (if applicable) on **Insert Date**. The agreement is for the **#** year of a **#** year procurement cycle (if applicable);
- C. SDWP desires to retain Contractor to provide **Insert type of services** services on the terms and conditions set forth in this Agreement; and
- D. Contractor desires to perform such services for SDWP on the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the above recitals and the mutual promises and obligations of the parties as herein expressed, SDWP and Contractor hereby agree as follows:

1. TERM

This Agreement will commence on the Effective Date and terminate on **Insert Date** (“Termination Date”) unless terminated earlier or extended as provided herein. The period of time between the Effective Date and the Termination Date is referred to as the “Term.”

At its sole discretion, SDWP shall have the option of extending the Term. Upon such extension, SDWP and Contractor shall sign an amendment to this Agreement extending the Term, revising Attachment A – “Description of Services,” and revising Attachment B – “Fee Schedule/Invoicing.”

2. SERVICES TO BE PERFORMED BY CONTRACTOR

- 2.1. Contractor agrees to provide to SDWP services as described in Attachment A – “Description of Services” (collectively, the “Services”) attached to this Agreement and incorporated herein by this reference.
- 2.2. Contractor will determine the method, details, and means of performing the Services.
- 2.3. Contractor enters into this Agreement as an independent contractor, and shall remain an independent contractor throughout the Term. Contractor agrees that neither Contractor nor Contractor’s employees, subcontractors, or other persons hired or otherwise engaged by Contractor to perform the Services under this Agreement (each a “Contractor Party” and collectively “Contractor Parties”) are or will be an employee, partner, agent, or principal of SDWP at any time during the Term. Contractor, at Contractor’s own expense, is responsible for providing to Contractor Parties disability, unemployment, worker’s compensation, and other insurance, training, permits,

licenses, and all other employment related insurance, benefits, or programs desired by Contractor or required by law. Contractor agrees that neither Contractor nor any Contractor Party will be entitled to the rights or benefits afforded to employees of SDWP including, without limitation, SDWP provided disability or unemployment insurance, worker's compensation, medical insurance, retirement plans, sick leave, or any other SDWP employment benefit.

- 2.4. Contractor is responsible for paying, when due, all income taxes, including estimated taxes, incurred as a result of the compensation paid by SDWP to Contractor under this Agreement. Contractor shall provide SDWP proof of timely payment of such taxes upon request from SDWP. Contractor agrees to indemnify, defend and hold harmless SDWP and SDWP Parties (defined below) forever against and from any and all claims, costs, losses, fees, penalties, interest, or damages (including attorneys' fees reasonably incurred) suffered by Contractor's failure to comply with this provision.
- 2.5. Contractor may, at Contractor's own expense, use any of its own employees as Contractor deems necessary to perform the Services required of Contractor under this Agreement. SDWP may not control, direct or supervise Contractor's employees in the performance of those Services.

3. COMPENSATION

- 3.1. Contingent upon satisfactory completion of the deliverables ("Deliverables") described in Attachment A – "Description of Services" attached hereto, and in consideration for the Services actually performed by Contractor, SDWP agrees to pay Contractor an aggregate amount not to exceed **Insert Amount** ("Maximum Compensation"). Payments will be made by SDWP to Contractor in accordance with Section 3.2, below, and shall constitute full and complete compensation for Contractor's Services under this Agreement.
- 3.2. Following the submittal to SDWP of each Deliverable, Contractor shall submit to SDWPFinance@workforce.org an electronic, complete and correct invoice for Services actually provided in accordance with Attachment B – "Fee Schedule/Invoicing" ("Fee Schedule/Invoicing") attached hereto and made a part hereof by this reference. Upon approval by SDWP of the subject Deliverable and corresponding invoice, SDWP shall make payment to Contractor within fifteen (15) working days. Payment to Contractor will be made in arrears for Services actually provided and the aggregate dollar amount of all invoices submitted by Contractor to SDWP under this Agreement shall not exceed the Maximum Compensation set forth in Section 3.1, above.
- 3.3. Contractor shall be responsible for all expenses incurred in performing Services under this Agreement including, without limitation, costs and expenses (1) for local transportation, including parking, while on SDWP business, and (2) to maintain a cellular telephone to facilitate communication with SDWP.

4. PROVISIONS RELATED TO CONTRACTOR

- 4.1. Contractor shall work a sufficient number of hours per week to ensure that the Services are completed within the Term of this Agreement in accordance with Attachment A – "Description of Services" and Attachment B – "Fee Schedule/Invoicing."

- 4.2. Contractor may represent, perform services for, and contract with as many additional clients, persons, or companies as Contractor, in Contractor's sole discretion, sees fit.
- 4.3. Contractor may perform the Services under this Agreement at any suitable time and location Contractor chooses.
- 4.4. Contractor agrees to provide worker's compensation insurance for Contractor and all Contractor Parties.
- 4.5. Contractor, at Contractor's sole cost and expense, shall obtain and maintain in effect during the Term a commercial general liability insurance policy, naming SDWP, the City of San Diego, and the County of San Diego as additional insured, protecting against any and all claims for injury to persons or property, protecting against assumed or contractual liability under this Agreement, and covering negligent acts and omissions of Contractor and Contractor Parties, with such policy to be in the minimum amount of One Million Dollars (\$1,000,000.00) per occurrence, and with an aggregate limit of at least Two Million Dollars (\$2,000,000.00). Contractor shall provide SDWP a certificate evidencing such insurance.
- 4.6. Contractor represents that Contractor has the qualifications and skills necessary to perform the Services under this Agreement in a competent, professional manner, without the advice or direction of SDWP. This means Contractor is able to fulfill the requirements of this Agreement. Failure to perform all the Services required under this Agreement constitutes a material breach of the Agreement. Contractor has complete and sole discretion for the manner in which the work under this Agreement will be performed.
- 4.7. Performance of this Agreement and all work or obligations covered by and arising out of this Agreement shall be at the risk of Contractor exclusively. To the fullest extent permitted by law, Contractor shall, with respect to the Services, and all work and other obligations covered by or arising out of this Agreement, or the performance thereof, indemnify, protect, defend and hold harmless SDWP, the City of San Diego, the County of San Diego and each of their officers, directors, partners, joint ventures, representatives, and/or employees (collectively "SDWP Parties") forever against and from any and all allegations, losses, claims, actions, demands, damages, liabilities, or expenses (including costs, expenses and attorneys' fees reasonably incurred), arising directly or indirectly from this Agreement, or the performance thereof, except to the extent that the matter in question has been caused by SDWP's sole negligence or sole willful misconduct.
- 4.8. Neither this Agreement nor any duties or obligations of Contractor under this Agreement may be assigned by Contractor without the prior written consent of SDWP.
- 4.9. Contractor shall comply and shall cause all Contractor Parties to comply with all federal, state, and local statutes, ordinances, and regulations, and shall obtain all licenses and permits required for the performance of Services and Contractor's obligations under this Agreement.

5. PROVISIONS RELATED TO SDWP

- 5.1. SDWP agrees to comply with reasonable requests of Contractor and provide access to documents and equipment necessary to the performance of Contractor's duties under this Agreement.
- 5.2. Neither this Agreement nor any duties or obligations of SDWP under this Agreement may be assigned by SDWP without the prior written consent of Contractor.

6. TERMINATION

- 6.1. Notwithstanding any other provision of this Agreement, SDWP may terminate this Agreement at any time, for any reason or for no reason, by giving thirty (30) days prior written notice ("Early Termination Notice") to the Contractor.
 - 6.1.1. In the event of early termination, (i) if the Agreement is for supplies, Contractor shall be compensated in accordance with this Agreement for Contractor's auditable costs up to and including the date Contractor receives the Early Termination Notice, and (ii) if the Agreement is for services, Contractor shall be compensated in accordance with this Agreement only for the actual Services rendered to the effective date of the termination.
- 6.2. This Agreement will terminate automatically on the occurrence of any of the following events:
 - 6.2.1. Bankruptcy or insolvency of either party;
 - 6.2.2. Sale or other transfer of Contractor's business; or
 - 6.2.3. Death of Contractor.
- 6.3. If either party defaults in the performance of this Agreement or materially breaches any of its provisions, the non-breaching party may immediately terminate this Agreement if such default is not cured by the breaching party within ten (10) business days after receipt of written notice specifying the default. Termination will take effect immediately on receipt of notice by the breaching party. For the purposes of this section, material breach of this Agreement includes, but is not limited to, the following:
 - 6.3.1. SDWP's failure to pay Contractor compensation due within thirty (30) days after SDWP's receipt of written demand for payment.
 - 6.3.2. Contractor's failure to complete the Services specified in Attachment A – "Description of Services."
 - 6.3.3. Contractor's material breach of any representation or agreement contained in this Agreement.
 - 6.3.4. SDWP's material breach of any representation or agreement contained in this Agreement.

- 6.4. When funds are not appropriated or otherwise made available by SDWP to support continuation of this Agreement, this Agreement shall be cancelled as of the effective date set forth in the Early Termination Notice and Contractor shall be reimbursed for the reasonable value of any nonrecurring cost incurred but not yet recovered under this Agreement.

7. PROPRIETARY RIGHTS

- 7.1. Contractor agrees that the Services and every component thereof including, without limitation, all designs, plans, reports, specifications, drawings, inventions, processes, software code, works of authorship, and other information or items conceived of, developed, or produced by Contractor and each Contractor Party while performing Services under this Agreement including, without limitation, all patentable and copyrightable inventions, intellectual property and recordings, in every format, are each a “work for hire” (“Works for Hire”) by SDWP and are the sole and exclusive property of SDWP except as provided in 37 CFR 401 and 2 CFR 200.
- 7.2. Contractor on behalf of itself and all Contractor Parties hereby assigns to SDWP each such Work for Hire and all copyrights, patents, or trademarks obtained by Contractor while performing Services under this Agreement, as the sole and exclusive property of SDWP. At SDWP’s expense, Contractor agrees to execute, and to cause all Contractor Parties to execute, such additional written assignments to SDWP as SDWP requests, and Contractor hereby agrees to assist SDWP to obtain patents and copyrights for all or any such Work for Hire as SDWP determines, in its sole and absolute discretion. Such assistance includes providing data, plans, specifications, descriptions, documentation, and other information, as well as assisting SDWP in completing any required application or registration.
- 7.3. Any written, printed, graphic, or electronically recorded information furnished by SDWP for Contractor’s use is the sole property of SDWP. This confidential and proprietary information includes, but is not limited to, customer requirements, customer lists, outreach information, and information concerning SDWP’s employees, products, services, prices, operations, and subsidiaries.
- 7.4. Contractor agrees, and shall cause all Contractor Parties, to keep all confidential and proprietary information in the strictest confidence, and will not disclose it by any means to any person except with SDWP’s prior written approval, and only to the extent necessary to perform the Services under this Agreement. This prohibition applies to Contractor and all Contractor Parties. On the expiration or earlier termination of this Agreement, Contractor shall return to SDWP all proprietary and confidential information in the possession of Contractor and all Contractor Parties.
- 7.5. Contractor acknowledges that SDWP is the owner of all SDWP copyrights, and all derivative rights thereto, and all SDWP trademarks used in connection with this Agreement, and all other rights and entitlements thereto. Contractor has absolutely no right, title or interest in or to such copyrights or trademarks or the right to use such in commerce. Contractor agrees that it will not alter SDWP trademarks, that it will do nothing inconsistent with SDWP’s ownership thereof, and that all goodwill from use of such copyrights and trademarks under this Agreement shall inure to the benefit of SDWP.

8. MISCELLANEOUS PROVISIONS

- 8.1. By signing this agreement Contractor agrees to comply with all applicable regulations implementing Executive Order 12549, Debarment and Suspension, and certifies that, to the best of Contractor's knowledge, neither Contractor nor any Contractor Party is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency.
- 8.2. Equal Opportunity.
 - 8.2.1. Contractor and each Contractor Party shall comply with SDWP's Equal Opportunity Program for all work to be performed by Contractor under this Agreement.
 - 8.2.2. Contractor and each subcontractor, if any, shall comply with and shall submit a Certificate of Compliances with Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Act, and any other applicable federal and state laws and regulations hereinafter enacted.
 - 8.2.3. Contractor shall, in all solicitations or advertisements for employees placed by or behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, ancestry, age, physical and mental disability, political affiliation or belief, sexual orientation, citizenship, or any other classification protected by state or federal law.
 - 8.2.4. Contractor understands that failure to comply with the requirements of section 8.2 of this Agreement and its related subparagraphs 8.2.1 through 8.2.4, and/or submitting false information in response to these requirements, may result in termination of this Agreement and debarment from participation on SDWP contracts for a period of not less than one (1) year.
- 8.3. Contractor agrees that SDWP, applicable California state agencies, United States Department of Labor, and/or Comptroller General of the United States, and each of their duly authorized representatives, shall, until the expiration of five (5) years after final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers and records of Contractor involving transactions related to this Agreement.
- 8.4. When applicable, Contractor hereby certifies to SDWP that it will provide a drug-free workplace and do each of the following:
 - 8.4.1. Publish a statement notifying its employees that unlawful manufacture distribution, dispensation, possession or use of a controlled substance as defined in Schedules I – V of Section 202 of the Controlled Substances Act (22 U.S.C., § 812) is prohibited in Contractor's workplace and specify the actions that will be taken against employees for violation of the prohibition. This statement will be posted in a prominent place at Contractor's main office and at each job site large enough to necessitate an on-site office.

8.4.2. Establish a drug-free awareness program to inform employees about all of the following:

8.4.2.1. The dangers of drug abuse in the workplace.

8.4.2.2. Contractor's policy of maintaining a drug-free workplace.

8.4.2.3. Any available drug counseling, rehabilitation and employee assistance programs.

8.4.2.4. The penalties that may be imposed upon employees for drug abuse violations.

8.5. Contractor assures that the funds received by Contractor will not be used to lobby in connection with this Agreement.

8.6. State and federal whistleblower protection laws prohibit Contractor from preventing employees or retaliating against employees for reporting government waste, fraud or abuse. See generally, 41 U.S.C., § 4705; Cal. Lab. Code §§1102.5 et seq. Contractor assures and represents that it is in compliance with all aspects of state and federal whistleblower laws in addition to the following requirements.

8.6.1. If any fraud, waste or abuse is uncovered or suspected, Contractor shall report the concern immediately to SDWP. Contractor may also report fraud, waste and abuse at the state or federal level.

SDWP:

Andy Hall

Equal Opportunity Officer/Grievance Officer San Diego Workforce Partnership, Inc.

3910 University Avenue, Suite 400

San Diego, CA 92105

(619) 228-2900

EDD:

Attention: Compliance Resolution Unit Compliance Review Division, MIC 22M

Employment Development Department PO Box 826880

Sacramento, CA 94280-0001

OIG:

Office of Inspector General Complaints Analysis Office

200 Constitution Avenue, N.W., Room S-5506

Washington, D.C. 20210

oig.dol.gov/hotlinecontact.htm

Phone: (800)347-3756

Fax: (202) 693-7020

Allegations considered to be of an emergency nature may be reported by telephone to the Compliance Resolution Unit Supervisor at (916) 653-3270, and by calling the

OIG hotline at 1-800-347-3756, and followed immediately thereafter by a written report.

The following defines fraud, waste and abuse:

8.6.1.1. Fraud is the intentional submission of false information to get money or a benefit. Fraud may be committed against the government, an organization or an individual. Fraud occurs when an individual knows or should know that something is false and provides information or conceals material facts with the intent to deceive to benefit themselves or another person. Examples of fraud include, but are not limited to, the following:

8.6.1.1.1. Falsifying information on a Customer application for a consumer.

8.6.1.1.2. Soliciting, offering or receiving a kickback, bribe or rebate for program services.

8.6.1.1.3. Forging or altering required documentation on a program application.

8.6.1.1.4. Deliberately misrepresenting the services offered by SDWP, resulting in unnecessary cost, improper payments or overpayment.

8.6.1.2. Waste is the extravagant, careless or needless expenditure of government resources or services that result from deficient practices or decisions. An example of waste would be, but is not limited to, throwing away collateral and marketing materials provided by SDWP and intended for the public.

8.6.1.3. Abuse describes practices that either directly or indirectly result in unnecessary costs. Unlike fraud, the intention to deceive is not required. One example of abuse is providing unfunded program services that are not necessary for enrollment into SDWP's program (i.e., offering notary services on the side during Customer enrollment).

8.7. The Federal Privacy Act of 1974 and related state law and regulations require the proper disclosure of individually identifiable information and/or records. Contractor agrees to take appropriate precautions to protect confidential information from loss, unauthorized use, access, disclosure, modification and destruction.

8.8. Where applicable, Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. Sec 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. Sec 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency.

8.9. All notices, demands and requests contemplated hereunder by either party to the other shall be in writing, and shall be delivered by U.S. mail postage prepaid, registered or

certified, return receipt requested, or any nationally recognized overnight courier with signature required, to the following address:

SDWP

Attn: **Andy Hall**
Chief Operating Officer
San Diego Workforce Partnership, Inc.
3910 University Avenue, Suite 400
San Diego, CA 92105

CONTRACTOR

Attn: **Contact Name**
Contact Title
Contractor's Legal Name
Address
City, State Zip

Such other address or to such other person as may be designated by notice given during the term hereof by one party to the other. Any notice given in accordance with these provisions shall be deemed given and received by the addressee three (3) days after mailing.

- 8.10. The captions and headings throughout this Agreement are for convenience and reference only, and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provision of or the scope or intent of this Agreement nor in any way affect this Agreement. The undersigned agree that each party has reviewed this Agreement and has had the opportunity to have its independent legal counsel review this agreement, and the parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to any interpretation of this Agreement.
- 8.11. No waiver of any term, provision, or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be construed as a further and continuing waiver of any such term, provision or condition of this Agreement.
- 8.12. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter of this Agreement, and no prior oral or written representations or agreements, and no contemporaneous oral representations or agreements, between the parties with respect to the subject matter of this Agreement shall be of any force and effect. Any additions, amendments or modifications to this Agreement shall be of no force and effect unless in writing and signed by all parties hereto.
- 8.13. If any term or provision of this Agreement or application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 8.14. If any legal action is brought to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorney's fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled.
- 8.15. This Agreement will be governed by and construed in accordance with the laws of the state of California. If either party institutes legal suit or action for enforcement of any

obligations contained herein, the venue of such suit or action shall be in San Diego, California.

[Continued on signature page]

IN WITNESS WHEREOF, the SDWP and Contractor have duly executed this Agreement as of the Effective Date.

SAN DIEGO WORKFORCE PARTNERSHIP, INC.
A California nonprofit public benefit corporation

By: _____

_____ Date

Name: **Andy Hall**

Title: **Chief Operating Officer**

Contractor's Legal Name
A **Insert type of corporation**

By: _____

_____ Date

Name: **Contact Name**

Title: **Contact Title**

TIN-**Insert TIN**

ATTACHMENTS

Attachment A – “Description of Services”

Attachment B – “Fee Schedule/Invoicing”

Attachment C – “Contractor’s Original Customized Training Application”

Click here to enter text. To remove text, delete text and enter space in this section.

Click here to enter text. To remove text, delete text and enter space in this section.