

**SAN DIEGO  
WORKFORCE  
PARTNERSHIP®**

**SAN DIEGO WORKFORCE PARTNERSHIP**

**Contract General Provisions**

**San Diego Workforce Partnership, Inc**

**CONTRACT GENERAL PROVISIONS**

**Revised June 2012**

**Table of Contents**

**1.0 TERMS AND DEFINITIONS.....1**

**2.0 CERTIFICATION/ASSURANCES.....2**

**3.0 EQUAL OPPORTUNITY AND NON-DISCRIMINATION.....5**

**4.0 ACCESS TO INDIVIDUALS WITH DISABILITIES.....7**

**5.0 CLEAN AIR AND CLEAN WATER ACT ..... 8**

**6.0 COMPLAINT RESOLUTION PROCEDURES ..... 8**

**7.0 ORDER OF PRECEDENCE..... 8**

**8.0 PERSONNEL PROCEDURES..... 9**

**9.0 APPLICABLE LAWS AND REGULATIONS..... 9**

**10.0 CONFIDENTIALITY ..... 10**

**11.0 EDUCATIONAL ASSISTANCE ..... 10**

**12.0 PAYMENT OF EMPLOYEE PAYROLL WITHHOLDINGS ..... 11**

**13.0 RELOCATION ..... 11**

**14.0 WORK STANDARDS (Applicable only to program participants) ..... 11**

**15.0 PROGRAM OPERATIONS DOCUMENTS ..... 12**

**16.0 PERFORMANCE REVIEWS ..... 13**

**17.0 TECHNOLOGY SYSTEMS USAGE REQUIREMENTS ..... 13**

**18.0 PROMPT SUBMITTAL ..... 14**

**19.0 FIDELITY BONDING (Not applicable to Local Governmental Entities) ..... 15**

**20.0 INSURANCE (Not applicable to Local Governmental Entities)..... 15**

**21.0 WAGE AND SALARY LIMITS ..... 16**

**22.0 PROGRAM INCOME..... 17**

**23.0 SUSPENSION OF FUNDING ..... 17**

**24.0 PAYMENT ..... 18**

**25.0 COMMINGLING OF FUNDS ..... 18**

**26.0 CASH ADVANCE ..... 19**

**27.0 IN-KIND CONTRIBUTIONS/MATCHING FUNDS/STAND-IN COSTS ..... 19**

**28.0 AUDIT..... 19**

**29.0 PROCUREMENT AND PURCHASES..... 20**

**30.0 MAINTENANCE OF RECORDS/ACCESS TO RECORDS ..... 20**

**31.0 PERMITS AND RESPONSIBILITIES ..... 21**

**32.0 PATENT RIGHTS/INTELLECTUAL PROPERTY ..... 21**

**33.0 CONFLICT OF INTEREST..... 22**

**34.0 OTHER FUNDING SOURCES..... 22**

**35.0 PROGRAM MANAGEMENT ..... 22**

**36.0 REQUEST FOR DATA..... 22**

**37.0 OUTREACH ..... 23**

**38.0 ENTIRE CONTRACT ..... 23**

**39.0 CONTRACT MODIFICATIONS ..... 23**

**40.0 ASSIGNMENT..... 24**

**41.0 INDEPENDENT CONTRACTOR STATUS ..... 24**  
**42.0 SUBCONTRACTING ..... 25**  
**43.0 INDEMNIFICATION ..... 25**  
**44.0 ATTORNEYS' FEES AND COSTS ..... 26**  
**45.0 SEVERABILITY OF PROVISIONS..... 26**  
**46.0 NOTICE..... 26**  
**47.0 TERMINATION FOR DEFAULT ..... 26**  
**48.0 TERMINATION ON OCCURANCE OF STATED EVENTS ..... 26**  
**49.0 TERMINATION DUE TO UNAVAILABILITY OF FUNDS ..... 27**  
**50.0 TERMINATION FOR CONVENIENCE..... 27**  
**51.0 SPECIAL PROVISIONS ..... 27**

**SAN DIEGO WORKFORCE PARTNERSHIP, INC.  
CONTRACT GENERAL PROVISIONS  
Revised June 2012**

**1.0 TERMS AND DEFINITIONS**

All terms and definitions contained in the applicable regulations are expressly applied to this contract as well as the following terms and definitions:

C.F.R. shall mean the Code of Federal Regulations.

Contractor shall mean any person, corporation, partnership or similar entity or a public agency with which the Workforce Partnership enters into contract for the delivery of services or the supply of materials.

CPA shall mean Certified Public Accountant.

DOL shall mean the U.S. Department of Labor.

EDD shall mean the Employment Development Department of the State of California.

EO shall mean those policies, provisions and/or requirements relating to the Equal Opportunity and Nondiscrimination provisions of the Workforce Investment Act (WIA) that prohibit discrimination against any employee, applicant, or participant for training or employment because of race, color, religion, gender, national origin, age, physical or mental disability, political affiliation or belief, sexual orientation, and/or citizenship.

ETA shall mean the Employment and Training Administration within the U.S. Department of Labor.

JPA shall mean the Joint Exercise of Powers Agreement between the County of San Diego and the City of San Diego, as amended from time to time, to prepare a regional comprehensive workforce plan.

OJT shall mean On-the-Job Training as defined in the Workforce Investment Act, Section 101 (31).

OMB shall mean the Office of Management and Budget within the Executive Office of the President of the United States.

Operations Manual shall mean the Workforce Partnership Operations Manual, as amended from time to time.

Operations Issuances shall mean written notices issued on changes in rules, policies, and/or procedures that are an addition to or revision of the Operations Manual.

Pub. L. shall mean Public Law.

State shall mean the State of California.

TEGL shall mean a Training and Employment Guidance Letter issued by the U.S. Department of Labor.

U.S.C. shall mean United States Code.

WIA shall mean the Workforce Investment Act of 1998 (Public Law 105-220).

Workforce Partnership shall mean the San Diego Workforce Partnership, Inc., a non-profit public benefit corporation that administers workforce-related funds, such as Workforce Investment Act funds.

## 2.0 CERTIFICATION/ASSURANCES

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

- 2.1 Sectarian Activities: There shall be no religious worship, instructions, or proselytizing as part of or in connection with the performance of this contract.
- 2.2 National Labor Relations Board: Contractor (if not a public entity), by signing this contract, does swear under penalty of perjury, that no more than one final unappeasable finding of contempt of court by a federal court has been issued against the Contractor within the immediate preceding two-year period because of Contractor's failure to comply with an order of a federal court, which orders the Contractor to comply with an order of the National Labor Relations Board (Public Contract Code, § 10296).
- 2.3 Prior Findings: Contractor, by signing this contract, does swear under penalty of perjury, that it has not failed to satisfy any major condition in a current or previous contract with the DOL or the State of California and has not failed to satisfy conditions relating to the resolution of a final finding and determination, including repayment of debts.
- 2.4 Debarment and Suspension Certification: By signing this contract, the Contractor hereby certifies under penalty of perjury under laws of the State of California that the Contractor will comply with regulations implementing Executive Order 12549, Debarment and Suspension (activities awarded) and Executive Order 12689 Debarment and Suspension (activities procured), 29 C.F.R. 98, that the prospective participant (i.e., grantee), to the best of its knowledge and belief, that it and its principals:
  - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transitions by any federal department or agency.
  - b. Have not within a three-year period preceding this contract been convicted of or had a civil judgment rendered against them for: commission of fraud; or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; or a violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification; or destruction of records, making false statements, or receiving stolen property.

- c. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses enumerated in Section 2 of this certification.
- d. Have not within a three-year period preceding this contract had one or more public transactions (federal, state, or local) terminated for cause of default.

2.5 Lobbying Restrictions: By signing this contract the Contractor hereby assures and certifies to the lobbying restrictions which are codified in the DOL regulations at 29 C.F.R. 93.

- a. No federal appropriated funds have been paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this federal contract, grant loan, or cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress, in connection with this contract, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying" in accordance with its instructions.
- c. The undersigned shall require that the language of the lobbying restrictions be included in the award documents for contract transaction over \$100,000 (per OMB) at all tiers (including contracts and subcontracts, under grants, loan, or cooperative agreements), and that all sub-recipients shall certify and disclose accordingly. This includes all contracts that meet the \$100,000 threshold via contract modification.
- d. This certification is a material representation of fact upon which reliance is placed when this transaction is executed. Submission of the Lobbying Certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

- 2.6 Priority Hiring Considerations: If this contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the contract to qualified recipients of aid under Welfare and Institutions Section Code 11200 (CalWorks) in accordance with California Public Contract Code Section 10353. This includes all contracts that meet the \$200,000 threshold via contract modification.
- 2.7 Sweat-free Code of Conduct:
- a. 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 furnished to the state pursuant to the contract have been laundered or produced in whole, in part, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares under penalty of perjury that they adhere to the Sweat-free Code of Conduct as set forth on the California Department of Industrial Relations website located at [www.dir.ca.gov](http://www.dir.ca.gov), and California Public Contract Code Section 6108.
  - b. Contractor agrees to cooperate fully in providing reasonable access to Contractors' records, documents, agents or employees, or premises if reasonably required by authorized officials of the Contractor, the Department of Industrial Relations, or the Department of Justice to determine the Contractors' compliance with the requirements under paragraph 1 of the Sweat-free Code of Conduct.
- 2.8 Non-Traditional Employment: The term "non-traditional employee" refers to Occupations and fields of work where individuals from one gender comprise less than 25 percent of the individuals employed in such occupations or fields of work. Contractor will use its best efforts to provide training and job placement in those occupations and fields of work for persons of either underrepresented gender.
- 2.9 Contractor shall ensure compliance with federal regulations requiring certification of a drug-free workplace by implementing the following actions:
- a. Provide written notification to all employees that the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited in the workplace;

- b. Establish a drug-free awareness program to inform employees about the dangers of drug abuse in the workplace, available drug counseling and rehabilitation, and penalties for violations in the workplace;
  - c. Require employees to notify their employer within five (5) days if they are convicted of a criminal drug violation that occurs in the workplace; and
  - d. d. Initiate action ranging from participation in a drug rehabilitation program to dismissal against a convicted employee within thirty (30) days of the notice to employer.
- 2.10 In accordance with the Child Support Compliance Act, the Contractor recognizes and acknowledges:
- a. The importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 commencing with Section 5200 of Part 5 of Division 9 of the California Family Code; and
  - b. To the best of its knowledge, Contractor is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Employee Registry maintained by EDD.
- 2.11 In accordance with Section 163 of the Continuing Appropriations Resolution, 2010, Division B of Pub. L. No. 111-68, the Contractor, by signing this contract, does swear under penalty of perjury, that none of the funds made available by this joint resolution or any prior Act have been provided to Association of Community Organizations for Reform Now or any of its affiliates, subsidiaries or allied organizations, as indicated in DOL's TEGL 8-09, Guidance Section 511, Division E of the FY 2010 Consolidated Appropriations Act, issued on November 17, 2010.

**3.0 EQUAL OPPORTUNITY AND NON-DISCRIMINATION**

- 3.1 Contractor shall comply fully with the equal opportunity and nondiscrimination provisions of WIA. These provisions include the following seven elements:
- a. Initial and continuing communication of EO policy and procedures;
  - b. Inclusion of EO provisions and nondiscrimination assurances in all sub-contracts, plans, and agreements;
  - c. Provision of equitable services among substantial segments of the local workforce investment area's population to be served under this contract;
  - d. Provision of program and site access to individuals with disabilities;
  - e. Collection and maintenance of EO data;
  - f. Maintenance of a discrimination complaint processing system; and
  - g. Implementing corrective actions for discrimination.



Contractor acknowledges the government’s right to seek judicial enforcement of the nondiscrimination assurance. Specific requirements are provided in Chapter IX of the Operations Manual, Equal Opportunity and Non-Discrimination.

- 3.2 Contractor shall maintain, communicate, and adhere to policies that provide equal opportunity to access, admission, and provision of all services funded under this contract, and shall prohibit discrimination on the grounds of:
  - a. race
  - b. color
  - c. religion
  - d. gender
  - e. national origin
  - f. age
  - g. physical or mental disability
  - h. political affiliation or belief
  - i. sexual orientation
  - j. citizenship.

This policy shall apply to Contractors, applicants, eligible applicants, participants, applicants for employment, employees, unions, or professional organizations holding collective bargaining or professional agreements with the Workforce Partnership, and members of the public.

- 3.3 Contractor shall establish and maintain procedures for implementing prompt corrective action when noncompliance is found. Contractor shall communicate the Workforce Partnership’s procedures for resolving allegations against the Contractor of noncompliance with applicable EO and non-discrimination policies to applicants, eligible applicants, participants, Applicants for employment, employees, Unions or professional organizations holding collective bargaining or professional agreements with the Workforce Partnership, and members of the public.

For more information, refer to Chapter IX of the Operations Manual, Equal Opportunity and Non-discrimination.

- 3.4 During the performance of this contract, Contractor agrees as follows:
  - a. Contractor shall comply with Workforce Partnership’s EO Program for all work to be performed by Contractor for the Workforce Partnership.
  - b. Contractor and each subcontractor, if any, shall fully comply with:
    - 1. WIA, Section 188;
    - 2. Title VI of the Civil Rights Act of 1973, as amended;
    - 3. Section 504 of the Rehabilitation Act of 1975, as amended;
    - 4. Age Discrimination Act of 1975, as amended;
    - 5. Title IX of the Education Amendments of 1972, as amended;

6. 29 C.F.R. 37 and all other regulations implementing these laws;

7. California Fair Employment Practices Act;
  8. 29 C.F.R. 95.48, Appendix A-1, including compliance with Executive Order 11246 of September 24, 1965, and as amended by Executive Order 11375 of October 13, 1967 and as supplemented by regulations at 41 C.F.R. 60; and
  9. Any other applicable federal and state laws and regulations hereinafter enacted.
- c. Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, national origin, age, physical or mental disability, political affiliation or belief, sexual orientation, or citizenship.
  - d. Contractor understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this contract and debarment from participating on Workforce Partnership contracts for a period of not less than one (1) year.

#### **4.0 ACCESS TO INDIVIDUALS WITH DISABILITIES**

- 4.1 Contractor shall comply with the Americans with Disabilities Act of 1990 (Pub. L. 101-336), and all amendments to such act. Contractor shall ensure that facilities, training, and other services are fully accessible to qualified individuals with disabilities. Contractor must maintain policies that prohibit discrimination on the basis of physical or mental disability or life-threatening illnesses and must guarantee reasonable accommodation to the known limitations of qualified individuals with disabilities. Contractor shall require compliance with these policies in all subcontracts. See Section 42.0 of these General Provisions regarding subcontracting. For more information, refer to Chapter IX of the Operations Manual, Equal Opportunity and Non-Discrimination.
- 4.2 All recruitment materials and advertisements that are distributed to the public for programs or activities funded by this contract shall contain the following statement:
 

“Equal opportunity employer/programs. Auxiliary aids and services are available upon request to individuals with disabilities.”
- 4.3 Where a telephone number is listed, Contractor shall provide a telephone number of any Telecommunications Device for the Deaf (TDD). If a TDD is not available, the Contractor shall provide the number of the California Relay Services (CRS) (1-800-735-2922 voice; 1-800-735-2929 TDD) as an alternative. The CRS is a service that relays messages to deaf persons via the telephone. A caller can contact the relay service by voice or TDD and an operator will then contact the party to be called, using voice or TDD.

## 5.0 CLEAN AIR AND CLEAN WATER ACTS

- 5.1 For governmental contract in excess of \$100,000, Contractor shall comply with all applicable standards, orders, or requirements listed under the Clean Air Act (42 U.S.C. 7606), and the Clean Water Act (33 U.S.C. 1368), Executive Order 11738 and Environmental Protection Agency regulations (40 C.F.R.). Contractor shall include this provision in any subcontract it enters into for amounts in excess of \$100,000.
- 5.2 For non-governmental contracts in excess of \$100,000, Contractor shall comply with applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency. This includes all contracts that meet the \$100,000 threshold via contract modification

## 6.0 COMPLAINT RESOLUTION PROCEDURES

Workforce Partnership has established complaint resolution procedures for contractors, contractors' staff, applicants, participants, and Workforce Partnership staff. These procedures, as identified in Chapter X of Workforce Partnership's Operations Manual, Program and Criminal Complaint Policy and Procedures are available for programs funded in whole or in part by the Workforce Partnership.

## 7.0 ORDER OF PRECEDENCE

- 7.1 In the event that a conflict exists between the different sections of this contract, the following order of precedence shall prevail:
- a. Statement of Work
  - b. Expenditure/Earnings Plan
  - c. Contract Special Provisions, if any
  - d. Contract General Provisions
  - e. Operations Manual
- 7.2 Administrative revisions to the Operations Manual may occasionally be made to clarify operational procedures and such revisions shall become a part of this contract on and after notice of the revision is sent to Contractor. Operations Issuances are issued for the purpose of providing service providers information on changes in rules, policies, and/or procedures that are an addition or revision to the Operations Manual.

## 8.0 PERSONNEL PROCEDURES

- 8.1 Contractor shall establish and maintain personnel policies and practices in accordance with federal, state, and local laws and regulations, including WIA Section 188, and all laws and all regulations implementing the laws specified.
- 8.2 Contractor shall ensure that none of its officers have been convicted of fraud or misappropriation of funds or any similar crime unless such conviction has been expunged or pardoned.
- 8.3 All personnel funded by the Workforce Partnership shall be governed under regular procedures established by the Contractor for its regular staff unless special circumstances warrant a separate procedure.
- 8.4 The Workforce Partnership is not liable for accrued vacation leave under this contract for any Workforce Partnership-funded position.

## 9.0 APPLICABLE LAWS AND REGULATIONS

- 9.1 The provisions of this contract are subject to WIA and its regulations and all requirements of the JPA. Subsequent changes to WIA shall become effective for the administration of this contract upon notification of such changes to the Workforce Partnership and the Contractor. If the regulations and/or requirements promulgated pursuant to WIA are amended or revised, Contractor shall comply with them or notify the Workforce Partnership within 30 days after being notified of the amendment or revision that it cannot conform, so that the Workforce Partnership may terminate this contract.
- 9.2 Contractor shall comply with the following applicable OMB Circulars now codified in the Code of Federal Regulations (CFR) as these regulations and circulars relate to the utilization of funds, the operation of programs, and the maintenance of records, books, accounts, and other documents.
- OMB Circular A-102, *Grants and Cooperative Agreements With State and Local Governments*;
  - 2 CFR Part 215, *Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations (based on OMB Circular A-110)*;
  - 2 CFR Part 220, *Cost Principles for Educational Institutions (based on OMB Circular A-21)*;
  - 2 CFR Part 225, *Cost Principles for State, Local and Indian Tribal Governments (based on OMB Circular A-87)*;
  - 2 CFR Part 230, *Cost Principles for Non-Profit Organizations (based on OMB Circular A-122)*;
  - 48 CFR Part 31, *Contract Cost Principles and Procedures (used for commercial organizations)*.

**10.0 CONFIDENTIALITY**

10.1 Contractors are responsible for maintaining the confidentiality and security of all state, city and county information obtained for the operation of WIA programs.

Confidential information is not open to the public and requires special precautions to protect it from loss, unauthorized use, access, disclosure, modification, and/or destruction. With regards to confidential information, Contractor agrees:

- a. To keep all confidential information furnished by EDD in the strictest confidence, and make information available to its own employees only on a “need-to-know” basis, as specifically authorized;
- b. Instruct all employees with access to EDD information regarding the confidential nature of the information and the sanctions against unauthorized use or disclosures found in the California Penal Code Section 502, and the California Unemployment Insurance Code Section 2111;
- c. Store and process such confidential information in electronic format in such a way that unauthorized persons cannot retrieve the information by means of computer, remote terminal, or other means;
- d. Return the EDD confidential information promptly or destroy all copies or derivations of the confidential information when its intended use ends, utilizing an approved method of confidential destruction: shredding, burning, or certified witnessed destruction; and
- e. Degauss or return to EDD all magnetic media.

**11.0 EDUCATIONAL ASSISTANCE**

11.1 Any Pell grant or other educational assistance funding received by Contractor on behalf of any participant served under this contract shall be promptly reported to the Workforce Partnership and shall be handled in accordance with 20 C.F.R. Part 652 et al, “Workforce Investment Act; Final Rules.”

11.2 Contractor shall ensure that:

- a. The same expenses are not billed or paid twice;
- b. Costs paid for through this contract and through the Pell Entitlement grant or other educational assistance are clearly identified;
- c. Workforce Partnership, or its authorized agent(s), are guaranteed access to the participant’s Pell grant records.

**12.0 PAYMENT OF EMPLOYEE PAYROLL WITHHOLDINGS**

Contractor shall pay employee payroll withholdings for federal, state, local taxes, FICA, and applicable insurance premiums, within the prescribed time schedules.

**13.0 RELOCATION**

No funds provided under this contract shall be used or proposed for use to encourage or induce the relocation of an establishment that results in a loss of employment for any employee of such establishment at the original location.

**14.0 WORK STANDARDS (APPLICABLE ONLY TO PROGRAM PARTICIPANTS)**

- 14.1 A trainee shall receive no payments for training activities in which the trainee fails to participate without good cause.
- 14.2 Individuals in OJT shall be compensated by the employer at the same rates, including periodic increases, as similarly situated employees or trainees and in accordance with applicable law, but in no event less than the higher of the rate specified in section 206(a)(1) of the Fair Labor Standards Act of 1938, as amended, or the applicable state or local minimum wage law.
- 14.3 Individuals employed in activities authorized under this contract shall be paid wages that shall not be less than the highest of:
  - a. The minimum wage under section 206(a)(1) of the Fair Labor Standards Act of 1938, as amended, or
  - b. The minimum wage under the applicable state or local minimum wage law, or
  - c. The prevailing rates of pay for individuals employed in similar occupations by the same employer.
- 14.4 Conditions of employment and training shall be appropriate and reasonable in light of such factors as the type of work, geographical region, and proficiency of the participant.
- 14.5 Health and safety standards established under state and federal law, otherwise applicable to working conditions of employees, shall be equally applicable to working conditions of participants.
- 14.6 Where participants are not covered by Worker's Compensation, they shall be provided with adequate on-site medical and accident insurance. Income maintenance insurance is not required for these participants.
- 14.7 All individuals employed in subsidized work experience or trained as an employee on OJT shall be provided wages and related benefits, and working conditions, to the same extent as other employees working a similar length of time

and doing the same type of work.



- 14.8 No currently employed worker shall be displaced by any participant (including partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits).
- 14.9 No program shall impair existing contracts for services or collective bargaining agreements, except that no program under this contract that would be inconsistent with the terms of the collective bargaining agreement shall be undertaken without written concurrence of the labor organization and employer concerned.
- 14.10 No participant shall be employed or job openings filled when:
  - a. Any individual is on layoff from the same or any substantially equivalent job; or
  - b. The employer has terminated employment of any regular employee or otherwise reduced its workforce with the intention of filling the vacancy so created by hiring a participant whose wages are subsidized under this contract.
- 14.11 No jobs shall be created that will infringe in any way upon the promotional opportunities of currently employed individuals.
- 14.12 No funds under this contract shall be used to assist, promote, or deter union organizing.
- 14.13 All laborers and mechanics employed by Contractors or subcontractors in any construction, alteration, or repair, including painting and decorating, that are receiving funds under this contract shall be paid wages in accordance with the Davis-Bacon Act (Pub. L. 71-798).
- 14.14 No participants under 18-years of age will be employed in any occupation that the DOL and/ or state has found to be particularly hazardous for persons between 16 and 18-years of age. Participants who are 14 to 15-years of age will participate only in accordance with the limitations imposed by the Fair Labor Standards Act of 1938, as amended, and California Labor Code §§ 1285-1312 and 1390-1399.

**15.0 PROGRAM OPERATIONS DOCUMENTS**

- 15.1 To facilitate evaluation of Contractor's operation and assure compliance with WIA and other applicable federal, state, or local regulations, Contractor shall adhere to the Workforce Partnership Operations Manual.
- 15.2 Scope of Operations Manual: the Operations Manual incorporates detailed requirements, instructions, and procedures for the performance of this contract. The Operations Manual may include but is not limited to the following requirements: contract administration; financial management, including budgeting, accounting, payment, fiscal reporting, allowable costs, personnel

procedures, close-out procedures; purchasing and acquisition of property; eligibility certification; monitoring and evaluation; case management system; program activities; EO policy and procedures; program and criminal complaint policy and procedures.

- 15.3 Modification: Workforce Partnership, upon written notice to Contractor, may modify the Operations Manual. Contractor may recommend modifications that shall be subject to the approval of the President of the Workforce Partnership or his/her designated representative. The Workforce Partnership agrees to make only those modifications that are reasonable and necessary to the operation and continued maintenance of the program and the discharge of its obligation.
- 15.4 Binding Effect: Contractor agrees to adhere to the provisions of the Operations Manual and any modifications thereto, or as amended. Any deviation from the provisions of the Operations Manual without the express written permission of the President and CEO of the Workforce Partnership or his/her designated representative shall constitute cause for suspension or termination of this contract.

**16.0 PERFORMANCE REVIEWS**

- 16.1 The Workforce Partnership shall periodically review Contractor’s actual earnings and/or performance levels, for the purpose of assessing whether an adjustment of the funds allocated is appropriate. Contracts performing below planned earnings or performance levels may be subject to de-obligation of unearned/unused funds.
- 16.2 If Contractor is found significantly below planned earnings or performance rates, Contractor shall develop and submit a corrective action plan showing how the planned earnings and performance rates will be achieved through accelerated performance during the period of the contract. The Workforce Partnership may accept or reject the corrective action in whole or in part and may unilaterally de-obligate the difference between the planned and actual earnings rates.

**17.0 TECHNOLOGY SYSTEMS USAGE REQUIREMENTS**

One-stop operators, partners, and contracted service providers shall use technology systems of, or provided by, the Workforce Partnership for tracking, reporting, coordinating, and communicating on client and employer information. Contractor shall utilize the local management system selected by the Workforce Partnership. This includes the entry of individual participant data such as eligibility determination, demographics, activities, case notes, and outcomes data. Timely data entry is required and must be entered within three (3) days after the date of any individual activity. Workforce Partnership will conduct ongoing monitoring to evaluate Contractor’s use of the data system. Failure to comply with required use will result in correction action and may result in the contract being terminated. Workforce Partnership will provide Contractor with technical assistance on the data system. The use of a standard data management system with One-stop operators, partners, and contracted service providers will allow for sharing of information.

All contractors and partners will utilize the Customer Information Services Reporting System (CISRS) until deployment of the new statewide California Workforce Services Network (CWSN) is completed.

The systems assist with determining program outcomes and performance, as well as, system usage itself. They include, but are not limited to, the following:

- a. California Workforce Services Network (CWSN);
- b. San Diego Workforce Partnership's Case Management Data system; and
- c. Business Contact Management System (BCMS); and
- d. San Diego Workforce Partnership's Accounting System; and
- e. [www.workforce.org](http://www.workforce.org) and [www.facesoftheamericanrecovery.org](http://www.facesoftheamericanrecovery.org) .

## 18.0 PROMPT SUBMITTAL

- 18.1 Contractor agrees to complete and input into the designated Workforce Partnership's computer system, all participant data within three (3) working days after the transaction date, unless otherwise directed by the Workforce Partnership for evaluation purposes or interim/final closeout.
- 18.2 Contractor further agrees to submit correct and complete invoices no later than the **eighth (8th) calendar day** of the month following the month the expenses were incurred, unless otherwise directed by the Workforce Partnership for evaluation purpose or interim/final close out. Invoices submitted without all required detail and reports will be returned to the Contractor and will not be processed until the Workforce Partnership receives all correct and complete documentation. Invoices submitted without required detail and reports will be considered late and will be subject to monetary penalties and/or other sanctions. Incorrect or incomplete invoices submitted by the due date do not qualify as being received on time. Therefore, only correct and complete invoices, which can be properly processed, and which are submitted by the due date shall qualify as being received on time. Corrected invoices received after the due date will incur a late penalty. Additional reporting requirements are detailed in Chapter VI, Financial Management, of the Operations Manual.
- 18.3 Contractors that fail to enter required participant data and/or submit invoices by the stated deadlines shall be subject to monetary penalties that must be paid from non-federal funds and other sanctions as specified below, and may also be subject to de-obligation of funds.
- 18.4 Late data entry into the designated the Workforce Partnership's computer system of more than 5% in a given month will result in a penalty of \$500. This penalty will increase to \$1,000 for every consecutive month of a late data entry thereafter. Three non-compliance occurrences in any twelve-month period may result in Contractor being placed on corrective action status. In the event unscheduled downtime of the Workforce Partnership computer prohibits the timely input of the required data, the Workforce Partnership will impose no sanctions. Contractor

must notify the Workforce Partnership of pending data entry in the event of unscheduled downtime.

18.5 Late invoice submittal will result in a penalty of 10% of the invoice, not to exceed \$1,000, taken by the Workforce Partnership via a reduction of the invoice payment. Three non-compliance occurrences in any twelve-month period may result in the Contractor’s placement in the Workforce Partnership’s corrective action status.

18.6 Additional sanctions may be specified and included in the Section 51.0 of these Provisions (Special Provisions).

**19.0 FIDELITY BONDING (NOT APPLICABLE TO LOCAL GOVERNMENTAL ENTITIES)**

Prior to any disbursements, for any purpose other than obtaining fidelity bonds, Contractor agrees that all persons handling funds received or disbursements made hereunder shall be covered by a fidelity bond in an amount equal to 50% of the contract amount up to a maximum of \$100,000 and shall provide the Workforce Partnership with a copy of such bond. The terms of the bond shall include the Workforce Partnership as a named additional insured and an endorsement to the effect that the insurer shall notify the Workforce Partnership in writing of any cancellation or material change in the bonding coverage. In the event of cancellation or reduction, the Workforce Partnership shall make no further disbursement until it is assured that adequate coverage has been obtained.

**20.0 INSURANCE (NOT APPLICABLE TO LOCAL GOVERNMENTAL ENTITIES)**

20.1 The Contractor shall procure and maintain during the entire period of performance under this contract the following minimum insurance:

<u>Type of Insurance</u>	<u>Coverage</u>
A) Casualty (fire and theft) covering all personal property acquired with Workforce Partnership funds.	100% present day cost replacement coverage is required on all property purchased with Workforce Partnership funds.
B) Commercial General Liability including premises, operations, and automobiles, and sexual misconduct insurance (sexual misconduct insurance is required only for youth service providers and can be a component of the commercial general liability insurance, professional liability insurance or a stand alone policy).	\$1,000,000 per occurrence for bodily injury, personal injury and property damage. General Aggregate limit shall be no less \$2,000,000.
C) Worker’s Compensation	As required by state law

20.2 Prior to commencement of work, Contractor shall furnish to the Workforce Partnership a Certificate of Insurance or written statement from the insurance carrier indicating the presence of the required insurance. The Certificate of Insurance shall list the Workforce Partnership as additional insured. The certificate or statement shall contain an endorsement to the effect that cancellation or any material change in policies adversely affecting the interests of the Workforce Partnership in such insurance shall not be effective until 30 days after written notice thereof to the Workforce Partnership.

20.3 Certificates or Statements shall be addressed to:

San Diego Workforce Partnership, Inc.  
ATTN: Vice-President and Chief Operating Officer  
3910 University Avenue, Suite 400  
San Diego, CA 92105

**21.0 WAGE AND SALARY LIMITS**

21.1 Contractor shall not pay its employees funded under this contract in excess of the occupational earnings paid in like positions in the San Diego Metropolitan area. The DOL publication entitled, “Area Wage Survey for San Diego” may be used as a guide.

21.2 Contractor shall not use funds appropriated to the Workforce Partnership through ETA to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II (Pub. L. 109-234 § 7013). A salary table providing this rate is listed on the Federal Office of Personnel Management website [www.opm.gov](http://www.opm.gov) under Salaries and Wages. These levels are adjusted annually and the web-site is updated accordingly. Effective January 1, 2012 the salary and bonus limit is set at \$179,700 until otherwise advised.

Contractors shall follow the instructions for implementing the salary and bonus limitations as provided in TEGL 05-06, “Implementing the Salary and Bonus Limitations in Public Law 109-234.” This limit shall not apply to vendors providing goods and services as defined in OMB Circular A-133.

21.3 The Workforce Partnership shall reimburse Contractor only for staff salaries/wages that are allowable under the funding source for this contract (e.g., WIA) and are incorporated in Contractor’s budget.

21.4 Contractor must maintain complete time and attendance records for all personnel funded by the Workforce Partnership. This includes such records for administrative staff or participants receiving wages.

**22.0 PROGRAM INCOME**

- 22.1 Contractor shall adhere to Program Income Procedures detailed in Chapter VI, Financial Management, of the Operations Manual as prepared and issued by the Workforce Partnership.
- 22.2 All income and earnings in any way attributable to activities funded under this contract are program income.
- 22.3 Private-for-profit Contractor's earnings will not be treated as program income.
- 22.4 Program income shall be reported to the Workforce Partnership monthly, or periodically as instructed by Workforce Partnership staff. These funds may be retained by the Contractor to underwrite additional training or training-related services pursuant to the program that generated them, consistent with the purposes of WIA and/or the program income procedures.

**23.0 SUSPENSION OF FUNDING**

- 23.1 Funds may be suspended in whole or in part for cause prior to or in lieu of contract termination. Cause shall include, but is not limited to, the following:
  - a. Failure to comply in any respect with any of the terms or conditions of this contract.
  - b. Any violation of applicable federal regulations or Workforce Partnership guidelines.
  - c. Submittal of reports to the Workforce Partnership that are incorrect in any substantial and material respect.
  - d. The grant to the Workforce Partnership for this program is terminated or suspended.
  - e. The Contractor is unable or unwilling to accept any additional conditions that may be required by law, by executive order, by regulations, or by other policy announced by the grantor.
- 23.2 Upon suspension of contract funding, Contractor agrees not to expend any funds related to or connected with the area of conflict from which the Workforce Partnership has determined that suspension of contract funding is necessary.
- 23.3 It is understood and agreed that Contractor shall submit to the Workforce Partnership a contract closeout package in accordance with the procedures delineated in the Chapter VI, Financial Management, of the Operations Manual. Failure to submit said package shall result in the withholding of any final payment

due under this contract and/or payments or advances requested under other Workforce Partnership-funded contracts until such time as the Workforce Partnership receives Contractor’s closeout package for this contract.

**24.0 PAYMENT**

- 24.1 It is expressly understood by the parties to this contract that the total compensation to be paid to Contractor shall not in any event exceed the amount indicated on the Contract Title Page. No expenditure of contract funds shall be made or obligation incurred in excess of the amount authorized by any budget account title except as provided in this contract.
- 24.2 Payments to Contractors will be made in the form of reimbursements of Contractor’s costs incurred during the preceding month.
- 24.3 Contractor shall be reimbursed for administrative costs in proportion to program expenditures and any significant deviation from the operating budget may subject the Contractor to possible suspension of funding. The Workforce Partnership may elect not to honor a particular payment request under this contract if:
  - a. Contractor, with or without knowledge, shall have made any misrepresentation of a substantial and material nature with respect to any information furnished to the Workforce Partnership.
  - b. Litigation is pending with respect to the performance by Contractor of any of its duties or obligations hereunder which may jeopardize or adversely affect the understanding of or the carrying out of this project, including any court action or proceeding involving the Federal Bankruptcy Code (U.S.C. Title 11).
  - c. Contractor is in default under this contract, or if Contractor has failed to materially comply with any provision.
  - d. Contractor shall not have submitted the required statement and reports on the dates prescribed by the Workforce Partnership.

**25.0 COMMINGLING OF FUNDS**

Funds provided to the Contractor under this contract may not be commingled with those obtained from any other sources, nor shall these funds be used for any purpose other than payment of the reasonable, allowable and allocable expenditures incurred in furtherance of this contract. Specifically forbidden is the temporary “loan” or transfer of funds provided by the Workforce Partnership under this contract to other programs within the control of Contractor.

## 26.0 CASH ADVANCE

- 26.1 Contractor acknowledges that cash advances shall be available only when the Contractor clearly demonstrates a financial need for a cash advance. Contractors that do not have sufficient funds from other sources will be considered eligible for a cash advance.

Contractors who feel they meet the financial needs requirement shall submit a written request for a cash advance to their contract point of contact at the Workforce Partnership, clearly stating the need and the financial status of the requesting organization. Sufficient documentation of financial need must be submitted with the written request. Final approval of the request for cash advance is at the discretion of Workforce Partnership's Finance Director.

If the request is approved, the amount advanced will cover the estimated cash needs of the Contractor for an initial one-month period not to exceed 20% of the contract amount.

- 26.2 Terms of repayment: The cash advance will be applied to the first invoice submitted to the Workforce Partnership after receipt of the cash advance. If that month's expenditures are less than the cash advance, subsequent month's expenditures will be applied until the cash advance is repaid. Thereafter, Contractor will be reimbursed for actual cash disbursements and shall then return to standard invoicing practices.

## 27.0 IN-KIND CONTRIBUTIONS/MATCHING FUNDS/STAND-IN COSTS

- 27.1 Contractor shall track, on a monthly basis, all in-kind contributions, matching funds, if required by the contract, and non-federal stand-in costs.
- 27.2 Contractor shall report to the Workforce Partnership on forms provided to the Contractor by the Workforce Partnership, all in-kind contributions, matching funds, if required, and non-federal stand-in costs on a *monthly* basis. The Special Provisions section of the contract will indicate if *less* frequent reporting is required.

## 28.0 AUDIT

OMB Circular A-133 is issued pursuant to the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156. It sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of States, local governments, and non-profit organizations expending Federal awards. The following requirements apply to State, local government and not-for-profit organizations that expend \$500,000 or more in a year in Federal awards for fiscal years ending after December 31, 2003. State, local government and not-for-profit organization may not charge the cost of an audit to Federal awards, if the organization expended less than



\$500,000 in total Federal awards (all sources) or if the audit is not conducted in accordance with the Single Audit Act Amendment of 1996. ,

- 28.1 Contractor shall be responsible for the procurement and conduct of audits in compliance with the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156. An independent CPA firm must conduct the audit in compliance with the requirements of the Single Audit Act of 1984 and the Single Audit Act Amendments of 1996, as amended (Pub. L. 104-156). Contractor shall provide the Workforce Partnership with a copy of the completed audit no later than 30 days after receipt of the final audit report.
- 28.2 If a special audit of any work, services, records, or documents retained or used by Contractor in connection with this contract is required by the Workforce Partnership to safeguard program integrity, an independent CPA firm approved by the Workforce Partnership and engaged by Contractor shall conduct such audit. The costs of which such special audit shall be borne by the Contractor and charged to the administrative cost category of the contract budget.

## **29.0 PROCUREMENT AND PURCHASES**

- 29.1 Contractor shall have written procedures for the acquisition of goods and services. All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts, including conflict of interest. Each procurement must be documented and follow the guidance of 29 C.F.R. 95 §§ 95.40 through 95.48 for institutions of higher education, hospitals and other non-profit and commercial organizations; 29 C.F.R. 97, Subpart C § 97.36 for states and local government and OMB Circular A-133. Contractor shall make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, in procuring services.
- 29.2 All purchases of consumable supplies or materials, capital equipment and/or services made pursuant to this contract shall be made by purchase order or by written contract. The Contractor shall follow the provisions of Chapter III, Property Management, of the Operations Manual for all acquisition, use, and disposition of property purchased with Workforce Partnership funds.
- 29.3 Title to property and equipment that is rented or leased with an option to purchase by the Contractor shall be vested in the Workforce Partnership if the Contractor exercises the option to purchase. The Workforce Partnership shall be notified of any lease purchase agreement.

## **30.0 MAINTENANCE OF RECORDS/ACCESS TO RECORDS**

- 30.1 Contractor shall maintain and safeguard participant files and records, program records and documents, and evidence of accounting procedures and practices.

Records must be sufficient to justify all payments claimed and paid under this contract and to support payments to third parties for participant training/services such as OJT reimbursements to employers, or payments of tuition fees.

- 30.2 As a condition to receiving WIA funds, the federal, state and Workforce Partnership auditors, monitors, and their representatives shall have access to all contract documentation and records at all times during the period that the contract is in force, and for a period of five (5) years thereafter.
- 30.3 All contract documentation or records, including bank accounts, accounting records and personnel records must be maintained within the geographical boundaries of San Diego County at all times during performance of this contract and until such time as the contract is audited. Any transfer beyond San Diego County requires the Workforce Partnership’s prior written approval.
- 30.4 Contractor shall maintain all records for a minimum of five (5) years from the contract closeout date. If an administrative adjudication or litigation is commenced, the record retention period will be extended for the additional time required to complete the litigation. Should Contractor cease operations prior to the end of the five (5) year retention period, the Contractor shall either:
  - a. Notify the Workforce Partnership as to the location of the repository of the records; or
  - b. Deliver the records to a location designated by the Workforce Partnership.

**31.0 PERMITS AND RESPONSIBILITIES**

Contractor shall, without additional expense to the Workforce Partnership, be responsible for obtaining any necessary licenses and permits and for complying with any applicable federal, or state and municipal laws, codes, and regulations. Contractor shall take proper safety and health precautions to protect the work, the employees, the public, and the property of others.

**32.0 PATENT RIGHTS/INTELLECTUAL PROPERTY**

- 32.1 Contractor agrees to comply with 35 U.S.C. 203, Patent Laws for Government Contracts and notify the Workforce Partnership of any discovery or invention that arises or is developed in the course of or under this contract.
- 32.2 Contractor agrees that all intellectual properties created by the Contractor *in the course of performance of Contractor’s duties under this contract*, including without limitation, all patentable and copyrightable inventions and recordings, in every format, are each a “work for hire” and are the sole and exclusive property of the state, except as provided in 37 C.F.R. 401.14 and 29 C.F.R. 97.34 where it is the property of DOL.

In the event this contract does not qualify as a “work for hire” agreement, in partial consideration for the compensation paid to Contractor pursuant to this contract, Contractor hereby irrevocably assigns to the Workforce Partnership, on behalf of the state and DOL, in perpetuity, all of Contractor’s rights, title, and interest in and to all copyrights, patents, know-how, and other forms of intellectual property created by Contractor in the course of performance of Contractor’s duties under this contract. Contractor agrees to execute any forms of assignment or transfer reasonably requested by the Workforce Partnership during or following the term of this contract in order to evidence the foregoing agreement of the parties.

**33.0 CONFLICT OF INTEREST**

Contractor will establish safeguards to prohibit employees from using their position for a purpose that is or gives the appearance of being motivated by desire for private financial gain for themselves or others, particularly those with whom they have family, business, or other relationships. Contractor’s personnel shall not accept gratuities, favors, etc., from subcontractors or potential subcontractors.

**34.0 OTHER FUNDING SOURCES**

Contractor shall make available to the Workforce Partnership copies of contracts and any related contractual or financial information for any other projects and activities conducted by Contractor to assure the Workforce Partnership that there is maintenance of effort and no duplication of services, and that Workforce Partnership funds supplement rather than supplant the level of effort.

**35.0 PROGRAM MANAGEMENT**

35.1 Contractor shall designate in writing to the Workforce Partnership an individual to be the Contractor’s primary point of contact. Any changes in the designated individual or change of Program Director or change in the responsible fiscal officer shall be reported in writing to the Workforce Partnership within ten (10) working days.

35.2 Contractor shall indicate in writing to the Workforce Partnership its office site(s) as well as its training site(s). Any changes in the office/training site(s) shall be reported to the Workforce Partnership prior to the effective date(s) of the changes.

**36.0 REQUEST FOR DATA**

Contractor shall provide, on request of the Workforce Partnership, or its authorized agent, programmatic or financial information not necessarily addressed elsewhere in this contract. Such data may include, but is not necessarily limited to, Contractor’s past, present, or projected financial condition, balance sheets, or fund statements of revenues and expenses, cash flow statements, detailed list and schedule of liabilities with appropriate explanatory annexes.

**37.0 OUTREACH**

All outreach efforts on behalf of Contractor are the responsibility of the contractor. The Contractor is required to present the Workforce Partnership as the funding partner on any print, internet, television, and audio publications through the statement:

“Funded by the San Diego Workforce Partnership”.

The Workforce Partnership communications team is available to provide assistance, if needed. The Workforce Partnership logo will be provided to the contractor upon execution of the contract.

**38.0 ENTIRE CONTRACT**

This contract represents the sole and entire agreement between the Workforce Partnership and Contractor and supersedes all prior negotiations, representations, agreements, arrangements or understandings, either oral or written, between or among the parties hereto, relating to the subject matter of this contract, which are not fully expressed herein. No waiver, alteration, or modification of any of the provisions of this contract shall be binding unless in writing and signed by a duly authorized representative of both the Workforce Partnership and Contractor.

**39.0 CONTRACT MODIFICATIONS**

39.1 Procedure: Contractor shall submit any request for a contract modification in writing with a complete justification and explanation of said modification. In addition, revised budgets and schedules, where appropriate, must be submitted electronically or via U S Mail.

39.2 Workforce Partnership Response: Contractor shall receive written notification from the Workforce Partnership indicating the disposition of any request for contract modifications.

39.3 Workforce Partnership Authority: The Workforce Partnership may make certain limited unilateral modifications to this contract at any time under the following circumstances:

- a. There is an increase or decrease in federal or state funding levels.
- b. A modification to the contract is required in order to implement an adjustment to a Contractor’s plan.
- c. Funds awarded to the Contractor have not been expended in accordance with the schedule included in the approved Contractor’s plan. If after consultation with the Contractor, the Workforce Partnership has determined that the funds will not be spent in a timely manner; such funds will be for that reason, to the extent permitted by and in a manner consistent with state and federal law, regulations and policies, recaptured by the Workforce Partnership for reallocation.

- d. There is a change in state and federal law or regulation requiring a change in the provisions of this contract.
  
- 39.4 No contract modifications will be accepted after March 31, for contracts ending on June 30, of a particular program year. Exceptions will be made for no cost extensions and extreme circumstances that cause a deviation from the business plan.
  
- 39.5 Except as provided in Section 7.2 which refers to operations issuances which are issued for the purpose of providing service providers information on changes in rules, policies, and/or procedures that are an addition or revision to the Operations Manual and Section 39.3 above, this contract may be amended only in writing by the mutual agreement of both parties.
  
- 39.6 An amendment is required to change the Contractor's name as listed on this contract. Upon receipt of legal documentation of the name change, the Workforce Partnership will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

**40.0 ASSIGNMENT**

Contractor's services are unique to the needs of the Workforce Partnership. Contractor shall not assign or transfer any interest in this contract, whether by assignment or novation, without the prior written consent of the Workforce Partnership, provided however that claims for money due or to become due to the Contractor from the Workforce Partnership under this contract may be assigned to a bank, trust company or other financial institution, without such approval. The Contractor shall furnish notice of any such allowed assignment or transfer promptly to the Workforce Partnership by the Contractor.

**41.0 INDEPENDENT CONTRACTOR STATUS**

- 41.1 Contractor enters into this contract and will remain through the term of the contract as an independent contractor. Contractor agrees that it is not and will not become an employee, partner, agent, or principle of the Workforce Partnership while this contract is in effect.

Contractor agrees it is not entitled to the rights or benefits afforded to Workforce Partnership's employees, including disability or unemployment insurance, worker's compensation, medical insurance, sick leave, or any other employment benefit. Contractor is responsible for providing, at his own expense, disability, unemployment, and other insurance, worker's compensation, training, permits and licenses for himself and his employees and subcontractors.

Contractor is responsible for paying, when due, all income taxes including estimated taxes incurred as a result of compensation paid by Workforce Partnership to Contractor for services under this contract. On request, Contractor will provide the Workforce Partnership proof of timely payment. Contractor agrees to indemnify the Workforce Partnership for any claims, costs, losses, fees, penalties, interest, or damages suffered by Contractor's failure to comply with this provision.

- 41.2 The Workforce Partnership will not be obligated or liable hereunder to any party other than Contractor. Contractor shall so notify all subcontractors.
- 41.3 Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services under this contract. Any such employment or other duties shall have prior written approval of the Workforce Partnership.

**42.0 SUBCONTRACTING**

- 42.1 All subcontracts, except OJT contracts, which shall conform to applicable program guidelines, are subject to Workforce Partnership approval prior to implementation and shall provide for compliance with Section 4.0 of these General Provisions regarding the Americans with Disabilities Act of 1990 (Pub. L. 101-336). Only work or services provided in this contract may be subcontracted; furthermore, such subcontracts must be identified in the appropriate program or services budget.
- 42.2 Written subcontracts for any work or services subcontracted shall be provided to the Workforce Partnership with the written request for approval of the subcontract, and must be kept on file by the Contractor.
- 42.3 The request for approval of any proposed subcontract shall include a subcontract monitoring plan that describes the planned dates and content of each subcontract monitoring visit. The Contractor shall provide a written report of each monitoring visit to the Workforce Partnership within ten (10) days of each visit.
- 42.4 Subcontracts shall include all requirements and restrictions that apply to this contract.

**43.0 INDEMNIFICATION**

Performance of this contract and all work or obligations covered by and arising out of this contract shall be at the risk of Contractor exclusively. To the fullest extent permitted by law, Contractor shall, with respect to all work or obligations covered by or arising out of this contract, or the performance thereof, indemnify, hold harmless and defend the Workforce Partnership, San Diego Consortium Policy Board, the San Diego Workforce Investment Board, the City of San Diego, and the County of San Diego, and each of its

officers, partners, joint venture partners, representatives and/or employees from and against any and all allegations, losses, claims, actions, demands, damages, liabilities, or expenses (including costs, expenses and attorneys' fees), arising directly or indirectly from this contract, or the performance thereof, except to the extent that the matter in question has been caused by the Workforce Partnership's sole negligence or sole willful misconduct.

**44.0 ATTORNEYS' FEES AND COSTS**

If any legal action or any arbitration or other proceeding is brought for the enforcement of this contract, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this contract, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

**45.0 SEVERABILITY OF PROVISIONS**

If any term, covenant, condition or provision of this contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**46.0 NOTICE**

Any notice that may or must be given by any party under this contract will be delivered (i) personally, (ii) by certified mail, return receipt requested, or (iii) by a nationally recognized overnight courier, addressed to the party to whom it is intended.

Any notice given to either party shall be sent to the respective address set forth on the signature page of the contract, or to such other address as that party may designate for service of notice by a notice given in accordance with the provisions of this Section.

A notice sent pursuant to the terms of this Section shall be deemed delivered (A) when delivery is attempted, if delivered personally, (B) three (3) business days after the deposit into the United States mail, or (C) the day following deposit with a nationally recognized overnight courier.

**47.0 TERMINATION FOR DEFAULT**

If either party defaults in the performance of this contract, the non-defaulting party may terminate this contract if such default is not cured by the defaulting party within ten (10) business days after receipt of written notice specifying the default.

**48.0 TERMINATION ON OCCURANCE OF STATED EVENTS**

This contract will terminate automatically on the occurrence of any of the following events:

- a. Bankruptcy or insolvency of either party;
- b. Sale of Contractor's business;
- c. Death of Contractor.

**49.0 TERMINATION DUE TO UNAVAILABILITY OF FUNDS**

When funds are not appropriated or otherwise made available by the Workforce Partnership to support continuation of this contract, this contract shall be cancelled as of the effective date set forth in the termination notice and Contractor shall be reimbursed for the reasonable value of any nonrecurring cost incurred but not yet recovered under this contract.

**50.0 TERMINATION FOR CONVENIENCE**

The Workforce Partnership, by thirty (30) day written notice, may terminate this contract, in whole or in part, when it is in the best interests of the Workforce Partnership. If the contract is for supplies and is so terminated, Contractor shall be compensated in accordance with its auditable costs to point of notification of termination. To the extent that the contract is for services and is so terminated, the Workforce Partnership shall be liable only for payment in accordance with the payment provisions of the contract for the actual services rendered to the effective date of the termination.

**51.0 SPECIAL PROVISIONS**

This section is reserved for special provisions unique to this particular contract. If there are no pertinent special provisions, this section shall state:

“No special provisions apply to this contract.”