

SECTION I: GENERAL INFORMATION

A. Introduction

Employers' Training Resource (ETR), located at 1600 East Belle Terrace in Bakersfield, California, is the administrative and fiscal agent for the Kern, Inyo and Mono Counties Workforce Development Area (WDA). ETR is requesting proposals from qualified entities interested in providing Third-Party Employer of Record/Human Resources and Payrolling services for participants enrolled in various ETR programs that include a transitional subsidized employment or "paid work experience" component. This solicitation is intended as a "blanket" procurement authorizing ETR and the selected provider to enter into subsequent, project-specific agreements for this service on a reimbursement basis, with costs based on actual wages, benefits and insurance costs plus fees and, if applicable, indirect charges as proposed. Individual agreements will begin with a quote based on the wage rate (California minimum wage if not otherwise specified), the number of participants expected, the maximum number expected to be working at a given time, the maximum hours per week and maximum total hours, estimated cost of insurances and benefits, and applicable onboarding or other "per head" fees as authorized under this procurement. Funding may be under the Workforce Innovation and Opportunity Act (WIOA) or other funding available to ETR for specific projects. This procurement is being done in accordance with WIOA regulations since participants may be co-enrolled and WIOA/federal regulations are the most stringent.

WIOA supersedes the Workforce Investment Act of 1998 and retains and amends the Adult Education and Family Literacy Act of 1998, the Wagner-Peyser Act of 1933, and the Rehabilitation Act of 1973. Proposers should have experience providing Third Party Employer of Record/Human Resources and Payrolling services, have experience with subsidized employment, and be willing and able to work collaboratively with ETR to ensure compliance with federal and state labor laws, compliance with all County requirements, and positive relationships with our participants and host work sites. Proposers must be willing to share participant information with ETR to the extent necessary for ETR to manage County responsibilities and track participant progress and outcomes while adhering to applicable privacy laws.

B. Request for Proposals (RFP) Overview

ETR is seeking a single provider of services under this RFP. The initial term of this "blanket" procurement will be through June 30, 2022. Upon approval of the Workforce Development Board (WDB), the provider may be eligible for an extension of contracting for up to three (3) subsequent fiscal years before another full RFP is issued. Note that this procurement is for authorization for ETR/COUNTY of KERN to enter into subsequently negotiated contracts with the selected provider, for project-based services during the term. Once a provider is selected via this procurement, ETR will negotiate agreements with the provider for specific projects. There is an immediate need for services for subsidized work experience for Out-of-School youth ages 18-24 and additional projects under the Public Safety Realignment Act of 2011 (AB 109) and special grants are anticipated. Projects may vary from a handful of prospective enrollments to 80 – 100 enrollments depending on the program and funding stream. The selected provider should be ready to negotiate agreements and begin work as quickly as possible but also expect there may be times when there are very few or no participants actively at work. This variability and the need to accommodate multiple projects as they emerge is fundamental to our seeking a provider who is able to operate on a "per head" basis such that we are not paying monthly staff/overhead costs during times when there are no participants in the system.

C. Programs Requested Under this RFP

This RFP is targeted for the following services only:

To select one provider of Third-Party Human Resources and Payroll Services, including acting as Employer of Record, for participants enrolled in subsidized transitional employment (paid work experience) under the Workforce Innovation and Opportunity Act (WIOA) and/or other funding streams, in Kern County. This is a blanket procurement to select a provider. Contracts for the provision of actual services will be negotiated on project basis as noted above, per the general terms procured under this solicitation, and subject to any changes required under federal, State or local law. The selected provider will be expected to:

- Serve as Employer of Record for subsidized work experience participants enrolled by ETR into County programs;
- Provide payroll services including distributing pay (whether by check, debit card or other means), and handling of legally required state and federal deductions;
- Provide means by which ETR may “onboard” or refer participants to AGENCY for entry into its HR/Payroll system;
- Collect and verify participant time records OR provide system through which participants enter time records and ETR or AGENCY staff verify with host employer;
- Track and report accrued sick leave in compliance with California law;
- Comply with applicable provisions of the Affordable Care Act;
- Conduct participant orientation including required Sexual Harassment and any other pre-employment training required under California law;
- Maintain Workers’ Compensation insurance for participants;
- Provide Master Work Site Agreement templates for use with host work sites;
- Provide Individual Work Agreements templates for use with participants;
- Provide training for ETR staff if ETR is required to make entries into payroll or other components of system;
- Meet County requirements for insurance coverages and contracting;
- Meet all federal, State and County requirements for fiscal responsibility and adherence to federal cost principles (Uniform Guidance);
- Be willing to operate on a reimbursement basis with costs based on applicable wage, insurances, benefits and a “per head” or other participant-based fee to cover operating costs. Onboarding fees and indirect cost rates are acceptable, but “cost plus percentage” models are not allowed under WIOA; and
- Applicants must be willing to work with participants who have been recently released from incarceration in prison or the county jail system, and who may currently be under supervised release. If offering work site placement services (optional), AGENCY must ensure that work site is appropriate for participants’ work restrictions, if any.

Applicants may be local or remote. If local, applicant may offer work site identification and placement services or specify that ETR develop host work sites and match participants to appropriate work sites. Applicants must be willing to work collaboratively with ETR including sharing of participant information to permit ETR to report performance outcomes including, but not limited to entry into unsubsidized employment in the event that a work site hires a participant as their own employee.

D. Required Financial Statements

Applicants MUST provide a complete copy of their most recent audited financial statements with their proposal (if FY 2019-20 audit is not available, please explain) and, if applicable, the accompanying auditor's report in compliance with Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Chapter I, Chapter II Part 200 et al. ETR will review the audit documents for audit findings and major issues and will take into consideration any audit findings and/or major issues in determining if the applicant is at high risk for monitor findings and disallowed costs. Serious financial issues may disqualify the applicant from competition. If applicant is involved in litigation or financial documents show potential for litigation, applicant must explain and document sufficient set-aside for settlement if applicable.

Applicants are encouraged to share this information with appropriate fiscal staff to ensure that the audit report submission is correct and complete. New agencies that have not yet had an audit are permitted to submit current financial statements. Proposals that do not contain a complete audit report or financial statement submission will be considered incomplete.

E. Threshold Documents

Section II – Threshold Documents contain standard information that will be required of all applicants. This portion must be submitted with every proposal. An application not meeting the requirements of each threshold document may not receive any further review. Threshold documents must be signed. (In the event that scheduling prevents a governing board from issuing an authorized signature prior to the due date, the program administrator may sign a set of preliminary threshold documents and indicate when the governing board will meet and have the authorized representative sign a final set of threshold documents).

F. Deadline for Submission of Proposals

In order to be considered for funding, the applicant shall submit: one (1) hard original of threshold documents and financial statements; one (1) hard original plus three (3) hard copies of the application; and one (1) electronic copy of the application on a virus-free flash drive. Applicant agrees to be fully responsible for any damage caused by any materials submitted to ETR.

Proposals must be received at **Employers' Training Resource, 1600 East Belle Terrace, Bakersfield, CA 93307 [second floor east wing administrative office] before 3:00 p.m. Pacific Standard Time (PST) on March 8, 2021.** Envelopes containing proposals should be marked: **PROPOSAL: 3rd Party HR & Payroll.** Proposals may be mailed or dropped off in person. If submitting proposal in person, note that entry into the building will require masking and a temperature check. Please inform security that you are dropping off a proposal to ETR. Depending on COVID-19 safety measures in place, you may be asked to place the proposal in a box on the first floor. ETR staff is not responsible for ensuring the completeness of your proposal at drop-off. Please ensure that your submission is complete before mailing or delivery. If ETR staff later determine that a submission is incomplete, the flash drive copy will be checked. If the missing material is found on the flash drive, ETR may deem the submission complete.

All proposals submitted will be date and time stamped. Timely submission of proposals is the sole responsibility of the applicant. Late proposals will not be considered for grant award. ETR reserves

the right to determine the timeliness of all proposal submissions.

G. Eligible Agencies

Applicants must be eligible to operate programs under the WIOA and comply with subrecipient requirements for the State of California and the County of Kern. (Refer to the accompanying Resource Listing.)

I. Responsibilities of Contracting Agencies

1. Completing negotiations with ETR in a responsive and timely manner and complying with all terms and conditions of your subsequent Agreement(s);
2. Ensuring that the services provided are readily accessible to the individuals to be served;
3. Ensuring that the program is fully staffed with qualified individuals;
4. Reviewing and submitting all requested reports and claims for payment to ETR in a timely manner.

A sample County Subgrant Agreement Boilerplate Under the Workforce Innovation and Opportunity Act is included in the RFP as referenced as Attachment I-A. Selected agency will be required to enter into a contract that contains the terms and conditions contained in the sample agreement boilerplate. Attachment I-B contains additional requirements that selected agency must meet. If Agency wishes to be the originator of contracts, its standard template(s) must be revised to include County's required terms and be approved by County Counsel prior to use.

J. Funding

Because this is blanket procurement to select a provider of future services to be contracted under separate project-specific agreements, there is no funding amount associated with this RFP. Proposers are asked to describe their service model and pricing structure.

K. Selection of Service Provider

Primary considerations in the selection of a service provider include cost in context of the services provided; the ability to serve participants across Kern County; and ease of use of the system for ETR staff and participants. The applicant must also be able to operate under a reimbursement model and comply with all federal, State and County contracting requirements, including those for insurances. (See copy of contract template).

L. Proposal Review and Rating Process

The proposal review process will include the following activities to ensure that the procurement system meets required standards:

1. All proposals will be reviewed for compliance with WIOA, federal regulations, state policy, and the specifications of this RFP.
2. Awards will be made to an agency with a demonstrated ability to perform successfully under the terms and conditions of a subgrant or contract.
3. Applicants may be asked to answer specific questions concerning their proposals.

General presentations will not be permitted.

4. All proposals will be reviewed and rated. The selection of a provider for subsequent contracting is to be made through a three-phase process.
 - Phase I: Readers will initially evaluate each proposal for compliance with RFP threshold and Audit specifications described in Section II;
 - Phase II: Proposals passing the compliance review will then be evaluated on the applicant's ability to meet required elements of this RFP; and
 - Phase III: Proposals passing the ability to meet required elements of this RFP will then be compared in terms of cost, level of service proposed, and ease of use for both ETR staff and participants. The ability to complete required tasks such as participant orientation, timekeeping and delivery of pay via electronic, remote means to the extent possible is preferred both for efficiency, the ability to work with participants and employers across our large county, and safety during the current COVID-19 pandemic.

Recommendations will be presented to the Kern, Inyo and Mono Counties Workforce Development Board or subcommittee.

M. Evaluation Factors

Third Party Human Resources and Payroll Services

Criteria	
Capabilities and Demonstrated Ability	Pass/Fail
Service Model and Ease of Use	50
Pricing Model/Costs	50
Threshold Documents	Pass/Fail
Financial Audit/Statement	Pass/Fail
TOTAL POINTS	100

N. Appeals Process

When a proposal is not recommended for funding during the review process, if the applicant can show that the proposal did not receive due consideration or that other irregularities existed, then that applicant may appeal the recommendation to the WDB. The appeal must be submitted to the WDB within five (5) working days of the funding notification. Appeals received after the established time frame will not be accepted. The Executive Committee of the WDB will then conduct an Appeals Meeting. Issues and materials not raised or presented in or as an attachment to the original written appeal will not be considered at the Appeals Meeting. The decision made by the WDB Executive Committee will be final.

O. Term

The blanket procurement period will be from the approval of the selection through June 30, 2022. This blanket procurement may be extended for additional periods contingent on allowability and ETR's continued satisfaction with and need for the service. ETR reserves the right to modify the

scope of the program to any extent necessary to ensure compliance with local, state, or federal guidelines. The ability of a contractor to modify its program will be evaluated on federal, state, and local guidelines.

P. General Proposal Conditions

Formats in which proposals are to be submitted are included separately in this package. Proposals that do not conform to these formats may not be accepted by ETR.

Proposals submitted in response to this RFP are not legally binding; however, contracts based on the proposals become legally binding after all parties have signed them. All proposals submitted become the exclusive property of ETR. Proposals shall be considered public information and may be shared after awards are finalized, unless otherwise specified in the proposal.

Q. Oversight Requirements

ETR will conduct a financial monitoring review and program review of all contracts at least once a year. A service provider must agree that all records related to ETR-contracted programs will be made available to ETR and other oversight agencies for monitoring.

ETR requires that all service providers comply with audit requirements under the Federal Uniform Guidance, Chapter 11, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and the DOL's exceptions to the Uniform Guidance at 2 CFR Subtitle B Chapter XXIX – Department of Labor.

If awarded a contract, applicant agrees that all program, applicant, participant, personnel and financial records will be available in Kern County for audit and monitoring purposes, and such records will be available for a period of three (3) years.

Reimbursement for Chief Executive Officer's (or other such title) total compensation, whether direct or indirect, of non-profit agencies shall be no more than the amount stated in the GuideStar Nonprofit Compensation Report for California Organizations, median range, based on budget size. The version of GuideStar that applies is the latest version published at the time the contract is executed.

Effective June 15, 2006, all programs funded through the Department of Labor's Employment and Training Administration must comply with TEGL No. 05-06, which applies to agencies receiving funds from Kern County. This requirement sets a limitation on salary and bonus payments paid to individuals using WIOA funds, whether charged through direct or indirect cost systems. The limit is set at the equivalent of Executive Level II, which was \$197,300 for Calendar Year 2020. This rate may increase in successive calendar years. The effective rate at any given time is posted at www.opm.gov.

R. Negotiations Process

Once a provider is selected as a result of this procurement, ETR will negotiate project-specific agreements with the provider based on the pricing model proposed, and project details such as number of participants, wage rate, estimated Workers' Compensation costs, number of hours to be worked per week, maximum hours and number of participants working at any given time, or other considerations identified as part of the pricing model.

S. Costs Incurred by Applicants

All costs of proposal preparation shall be borne by the applicant. ETR shall not, in any event, be liable for any pre-contractual expenses incurred by applicant in the preparation and/or submission of the proposals. Proposals shall not include any such expenses as part of the proposed budget.

T. Accuracy and Completeness

The proposal must set forth accurate and complete information as required in this RFP. Unclear, incomplete, and/or inaccurate documentation, or falsification of any information, may result in disqualification from the contract award.

U. Withdrawal of Proposals

Proposals may be withdrawn by written request of the authorized signatory on the applicant's letterhead at any time prior to the scheduled deadline for receipt of proposals.

V. General Reservations

1. Proposals shall be reviewed and rated as submitted. The applicant may not make changes or additions after the deadline for receipt of proposals.
2. ETR reserves the right to extend the submission deadline, if such action is in the best interest of ETR. In the event the deadline is extended, applicants have the right to revise their proposals.
3. ETR makes no representation that any contract will be awarded to any applicant responding to this RFP.
4. ETR reserves the right to request additional information or documentation.
5. ETR reserves the right to verify all information in the proposal.
6. ETR reserves the right to reject any or all proposals when they are not responsive to the specifications of this RFP.
7. If approved as a provider, contracts may be negotiated, and contracts may contain additional terms or terms different from those set forth in this RFP.
8. Funding amounts for specific programs are contingent upon the final allocation amounts received from the funding source. ETR reserves the right to negotiate amendments to the number of planned participants or maximum hours should funding increases permit expansion or decreases require reductions, or to accommodate changes to minimum wage or the cost of required insurances. ETR shall be billed for actual costs of wages, benefits and insurances.
9. Funded service providers shall be subject to all applicable federal, state, and local regulations and guidelines pursuant to WIOA.

W. Standing of Proposer

Regardless of the merits of a proposal submitted, an applicant may not be recommended for funding if it has a history of contract non-compliance with ETR or any other funding source, poor past or current contract performance with ETR or any other funding source, or current disputed or disallowed costs with ETR or any other funding source.

X. Failed Competition

ETR reserves the right to reject any or all proposals that are not responsive to the specifications of this RFP. If a competition has been declared failed, ETR then has the option to re-compete the procurement or procure through another process.

**ATTACHMENT I-A: SAMPLE SUBGRANT AGREEMENT BOILERPLATE UNDER THE
WORKFORCE INNOVATION AND OPPORTUNITY ACT**

**SUBGRANT AGREEMENT UNDER THE WORKFORCE INNOVATION
AND OPPORTUNITY ACT
(COUNTY – [AGENCY])**

THIS AGREEMENT, entered into as of the _____ day of _____, 202____, is by and between the COUNTY OF KERN, a political subdivision of the State of California (“COUNTY”) and [AGENCY], [description], with its principal place of business located at [address] (“AGENCY”).

WITNESSETH :

WHEREAS:

(a) The Workforce Innovation and Opportunity Act (WIOA) was signed into law on July 22, 2014, by President Obama with broad bipartisan support from Congress; and

(b) WIOA supersedes the Workforce Investment Act (WIA) and amends the Adult Education and Family Literacy Act (AEFLA), the Wagner-Peyser Act, and the Rehabilitation Act of 1973; and

(c) WIOA strengthens the United States workforce development system through innovation, alignment and improvement of employment, training, and education programs; and

(d) WIOA was designed to be business-led to ensure public, private, and philanthropic investments result in an effective, coordinated, and accountable workforce service delivery system that is responsive to the local labor market demands by preparing adults and youth with the necessary skills to fill high demand careers; and

(e) WIOA formula funds are identified in the Catalog of Federal Domestic Assistance (CFDA) as CFDA 17.258 WIOA Adult Program, CFDA 17.259 WIOA Youth Activities, and CFDA 17.278 WIOA Dislocated Worker Formula Grants, and the WIOA Section 167 National Farmworker Jobs Program (NJFP) as CFDA 17.264; and

(f) COUNTY receives funding from WIOA and other complementary sources authorizing and enabling it to contract with public agencies and private for-profit and private non-profit organizations to provide job training activities and related services which are in addition to those which would otherwise be available in the area in the absence of such funds; and

(g) AGENCY is prepared to operate a program or programs designed to accomplish the objectives of WIOA, and COUNTY is prepared to provide WIOA funds to AGENCY to enable it to operate its program(s); and

(h) The U.S. Congress has authorized WIOA and the Office of Management and Budget (OMB) has published Title 2 of the Code of Federal Regulations (CFR), Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), which the Department of Labor (DOL) has adopted with exceptions at 2 CFR 2900.

NOW, THEREFORE, IT IS MUTUALLY AGREED between COUNTY and AGENCY as follows:

1. AGENCY's Duties and Obligations.

- a. AGENCY shall operate a program and/or provide related services designed to accomplish the objectives of WIOA. A description of AGENCY's program and services which shall be provided by AGENCY pursuant to this Agreement [are/is] attached hereto as Exhibit "A" and incorporated herein by this reference as if set forth in full.
- b. AGENCY shall use its best efforts to meet the planned objectives and program goals, as specified in Exhibit "B" which is attached hereto and incorporated herein by this reference as if set forth in full.
- c. AGENCY shall expend WIOA funds under this Agreement only as specified in Exhibit "C" which is attached hereto and incorporated herein by this reference as if set forth in full. No funds paid to AGENCY through this Agreement shall be utilized to compensate employees of AGENCY for overtime or compensatory time off, except to the extent that AGENCY is required to pay for overtime or compensatory time off pursuant to the Fair Labor Standards Act of 1938, 29 USCS Section 201 et seq. or applicable State law.
- d. AGENCY shall be liable for and accountable to COUNTY for any and all program funds improperly expended under this Agreement by AGENCY or any officer, employee, agent or representative thereof whether or not such officer, employee, agent or representative was acting within the scope of his or her employment. AGENCY shall repay COUNTY the amount of any such improper expenditures upon demand. Repayment of disallowed costs shall not be made from any federal or grant funds, including those received under this Agreement.
- e. In operating its program(s), AGENCY shall comply with the terms of this Agreement and the following:
 - 1) the provisions of WIOA and any amendments thereto;
 - 2) any and all Federal, State, and local regulations and guidelines issued pursuant to WIOA including, but not limited to, those enumerated in Exhibit "D" which is attached hereto and incorporated herein by this reference as if set forth in full;
 - 3) the terms of COUNTY's WIOA grant to the extent such terms are applicable to AGENCY;
 - 4) the regulations and guidelines enacted by COUNTY to facilitate its administration of the WIOA grant; and
 - 5) any other statute, regulation, rule or guideline applicable to WIOA.
 - 6) AGENCY shall otherwise assist COUNTY with meeting its obligations under WIOA.

2. COUNTY's Obligations.

- a. COUNTY shall provide funding to AGENCY, to enable AGENCY to operate its program(s) under WIOA, in the amounts and for the items set forth in "Exhibits "C". Payments of funds to AGENCY by COUNTY for the items set forth in "Exhibits "C" shall be made after the services

described therein have been rendered or the expenses set forth therein have been incurred if AGENCY received advance payments, or paid for by AGENCY on a reimbursement basis. All expenses reimbursed must be necessary and reasonable for the proper and efficient administration of AGENCY's program(s). Payment of funds to AGENCY by COUNTY for expenses described in "Exhibits "C" shall not exceed the actual cost to AGENCY, and all costs of travel, meals, and lodging incidental to travel charged by AGENCY to COUNTY shall not exceed those amounts as set forth in Exhibit "D", which is attached hereto and incorporated herein by this reference as if set forth in full. However, first class air travel shall not be considered "necessary and reasonable" for purposes of Exhibit "D" attached hereto, and COUNTY will not reimburse AGENCY for the expense of first class air travel.

- b. Notwithstanding any other provision of this Agreement, in no event shall the total sum of the payments made by COUNTY to AGENCY, pursuant to this Agreement, exceed the sum of _____ dollars (\$) _____.
 - c. Payments to AGENCY shall be made only upon AGENCY performing its duties to COUNTY's satisfaction and only upon AGENCY submitting a properly documented and verified claim. Such claim shall be submitted to the Assistant County Administrative Officer for COUNTY's Employers' Training Resource, or his/her designee, no later than the tenth calendar day of each month. Final claims must be filed no later than thirty (30) days following the termination of this Agreement and in no event shall COUNTY be obligated to honor or otherwise be liable for claims filed after July 31, 2021. COUNTY, in its sole discretion, may honor adjustments to claims after July 31, 2021.
 - d. In the event and upon a notice by the DOL or State of California of a rescission regarding WIOA funding, unexpended funds, including funds committed in this Agreement, may be subject to deobligation. Upon any such deobligation, COUNTY, at its sole option, may terminate or suspend this Agreement.
3. Record Keeping and Investigation.
- a. AGENCY shall keep records that are sufficient to permit COUNTY to prepare reports required by WIOA and to permit the tracing of funds to a level of expenditure adequate to ensure that the funds have not been spent unlawfully. Records shall also permit the tracing of potential stand-in costs which shall be reported with the monthly claim for payment and be included in any audit required by paragraph 3.f. below. AGENCY shall report match funds, if applicable, with the monthly claim for payment. Funds shall be tracked by year of contract as requested by COUNTY. For all costs, AGENCY's records shall describe and support the use of funds for authorized WIOA activities which COUNTY will allocate to the appropriate funding source.
 - b. AGENCY shall maintain program, applicant, participant, personnel and financial records as are required by WIOA, the State of California, and the Department of Labor to assure a proper accounting of all WIOA funds. AGENCY shall retain all records pertinent to this Agreement for a period of three (3) years from the date of final payment of this Agreement. If at the end of three (3) years there is litigation or an audit involving those records, AGENCY shall retain the records until the resolution of such litigation or audit.
 - c. The method used by AGENCY to determine an assigned cost must conform to generally accepted accounting principles and must not differ substantially from the methods used by AGENCY to determine costs for other operations or programs, except as provided in paragraph 3.a. above.

- d. The Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the non-Federal entity which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the non-Federal entity's personnel for the purpose of interview and discussion related to such documents. The rights of access in this section are not limited to the required retention period but last as long as the records are retained. AGENCY shall comply with this requirement regardless of whether it ceases to operate or maintain a presence within the State of California before the expiration of this Agreement.
- e. AGENCY shall allow COUNTY to monitor and audit its program(s) and additionally shall modify its program(s) when necessary to conform to the requirements of WIOA or applicable regulations (including amendments) when instructed to do so by COUNTY.
- f. AGENCY must comply with audit requirements under the Uniform Guidance and DOL's adoption of the Uniform Guidance at 2 CFR 2900. If AGENCY expends seven hundred fifty thousand dollars (\$750,000) or more from all federal funding sources during their fiscal year, AGENCY is required to submit an organization-wide financial and compliance audit report. The audit must be performed in accordance with the requirements of Government Auditing Standards and the requirements of Subpart F of 2 CFR Part 200.
- g. If AGENCY receives WIOA funds not requiring an audit under paragraph 3.f. above, AGENCY must arrange and pay for its own audit when so requested by COUNTY. AGENCY shall prepare or cause to be prepared any reports of its WIOA-funded program(s) when so requested by COUNTY.
- h. Audit reports must be filed with COUNTY within thirty (30) days after its completion, and access to AGENCY's independent auditors' work papers by Federal, State, or COUNTY auditors or their agents must be provided for. Acceptance of such audit by COUNTY does not prohibit COUNTY from performing any additional audit work required to follow up on findings, as deemed necessary by COUNTY or as necessary for COUNTY to comply with any administrative or audit requirements imposed by the Federal or State government.
- i. In the event AGENCY has an independent audit, the agreement between AGENCY and the independent auditor shall provide for access to the independent auditor's work papers by Federal, State, and COUNTY auditors or their authorized agents as may be deemed necessary to carry out their audit responsibilities. The audit agreement must also require AGENCY's independent auditor to retain the audit work papers for three (3) years from the date the audit was completed for review purposes.
- j. Before any funds are issued under this Agreement, AGENCY shall submit to COUNTY the findings of the most recent audit of its financial systems and disclose any disallowed costs owed. AGENCY must demonstrate that its financial accounting systems are adequate to satisfy Federal, State, and COUNTY audit requirements per WIOA applicable regulations. COUNTY may withhold payment until disallowed costs have been paid.

- k. Before any funds are released under this Agreement, AGENCY shall submit to COUNTY's Employers' Training Resource a letter describing how AGENCY will repay any disallowed expenditures with non-federal, non-grant funds.

4. Mutual Indemnification.

Each party shall defend, indemnify, and hold harmless, the other party, and their respective officers, directors, employees, agents, members, shareholders, partners, joint ventures, affiliates, successors, and assigns from and against any and all liabilities, obligations, claims, demands, suits, losses, expenses, damages, fines, judgments, settlements, and penalties, including, without limitation, costs, expenses, and attorneys' fees incident thereto, arising out of or based upon contract damages, property damage, or bodily injury (including death at any time resulting therefrom) to any person, including the indemnifying party's employees, affiliates, or agents, occasioned by or in connection with (1) the indemnifying party's negligent performance of (or failure to perform) the contract duties hereunder; (2) a violation of any laws or any negligent act or omission by the indemnifying party's or its affiliates, subcontractors, agents or employees during the performance of the contract duties hereunder; or (3) a breach of this Agreement by the indemnifying party or any of its affiliates, subcontractors, agents, or employees. The aforesaid obligation of indemnity shall be construed so as to extend to all legal, defense and investigation costs, as well as other reasonable costs, expenses and liabilities incurred by the party indemnified (including reasonable attorneys' fees), from and after the time at which the party indemnified received notification (whether verbal or written) that a claim or demand is to be made or may be made. Both parties' obligations under this Section do not extend to any liability caused by the sole negligence of the other party. This Section shall survive the termination or expiration of this agreement.

5. Insurance.

AGENCY, in order to protect COUNTY and its board members, officials, agents, officers, and employees against all claims and liability for death, injury, loss and damage as a result of AGENCY's actions in connection with the performance of AGENCY's obligations, as required in this Agreement, shall secure and maintain insurance as described below. AGENCY shall not perform any work under this Agreement until AGENCY has obtained all insurance required under this section and the required certificates of insurance and all required endorsements have been filed with the COUNTY's authorized insurance representative. Receipt of evidence of insurance that does not comply with all applicable insurance requirements shall not constitute a waiver of the insurance requirements set forth herein. The required documents must be signed by the authorized representative of the insurance company shown on the certificate. Upon request, AGENCY shall supply proof that such person is an authorized representative thereof and is authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon. The AGENCY shall promptly deliver a certificate of insurance, and all required endorsements, with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the term specified herein. Such certificates and endorsements shall be delivered to the COUNTY's authorized insurance representative prior to the expiration date of any policy and bear a notation evidencing payment of the premium thereof if so requested. AGENCY shall immediately pay any deductibles and self-insured retentions under all required insurance policies upon the submission of any claim by AGENCY or COUNTY as an additional insured.

a. Workers' Compensation and Employer's Liability Insurance Requirements:

In the event AGENCY has employees who may perform any services pursuant to this Agreement, AGENCY shall submit written proof that AGENCY is insured against liability for workers' compensation in accordance with the provisions of section 3700 of the California Labor Code.

AGENCY shall require any subcontractors to provide workers' compensation for all of the subcontractors' employees unless the subcontractors' employees are covered by the insurance afforded by AGENCY. If any class of employees engaged in work or services performed under this Agreement is not covered by California Labor Code section 3700, AGENCY shall provide and/or require each subcontractor to provide adequate insurance for the coverage of employees not otherwise covered.

AGENCY shall also maintain Employer's Liability Insurance with limits of one million dollars (\$1,000,000) for bodily injury or disease.

b. Liability Insurance Requirements:

1) AGENCY shall maintain in full force and effect, at all times during the term of this Agreement, the following insurance:

(a) Commercial General Liability Insurance including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement with the COUNTY), Products-Completed Operations Hazard, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of AGENCY's performance of work under this Agreement. The Commercial General Liability Insurance shall contain no exclusions or limitation for independent contractors working on the behalf of the named insured. AGENCY shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of this Agreement. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.

(b) Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering any vehicle and/or all owned, leased, hired and non-owned vehicles used in the performance of services pursuant to this Agreement with coverage equal to policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence.

(c) A fidelity bond covering each of its employees who has the power to disburse or handle funds under this Agreement. The limit of the fidelity bond shall not be less than one hundred thousand dollars (\$100,000) or an amount equal to the amount specified in paragraph 2.b. of the Agreement if said amount is less than one hundred thousand dollars (\$100,000). If the bond is canceled or reduced, AGENCY will immediately notify the COUNTY. If the bond is canceled or reduced, COUNTY will make no further disbursement until it is assured that adequate coverage has been obtained.

2) The Commercial General Liability Insurance and Automobile Liability Insurance required in this sub-paragraph b. shall include an endorsement naming the COUNTY and COUNTY's board members, officials, officers, agents and employees as additional

- insureds for liability arising out of this Agreement and any operations related thereto. Said endorsement shall be provided using one of the following three options: (i) on ISO form CG 20 10 11 85; or (ii) on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or CG 20 33 10 01; or (iii) on such other forms which provide coverage at least equal to or better than form CG 20 10 11 85.
- 3) Any self-insured retentions in excess of one hundred thousand dollars (\$100,000) must be declared on the Certificate of Insurance or other documentation provided to COUNTY and must be approved by the County Risk Manager.
 - 4) If any of the insurance coverages required under this Agreement is written on a claims-made basis, AGENCY, at AGENCY's option, shall either (i) maintain said coverage for at least three (3) years following the termination of this Agreement with coverage extending back to the effective date of this Agreement; (ii) purchase an extended reporting period of not less than three (3) years following the termination of this Agreement; or (iii) acquire a full prior acts provision on any renewal or replacement policy.
- c. Cancellation of Insurance - The above stated insurance coverages required to be maintained by AGENCY shall be maintained until the completion of all of AGENCY's obligations under this Agreement except as otherwise indicated herein. Each insurance policy supplied by the AGENCY shall not be suspended, voided, canceled or reduced in coverage or in limits except after ten (10) days written notice by AGENCY in the case of non-payment of premiums, or thirty (30) days written notice in all other cases. Such notice shall be by certified mail, return receipt requested. This notice requirement does not waive the insurance requirements stated herein. AGENCY shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon the insolvency of the insurer that issued the policy.
 - d. All insurance shall be issued by a company or companies admitted to do business in California and listed in the current "Best's Key Rating Guide" publication with a minimum rating of A-; VII. Any exception to these requirements must be approved by the County Risk Manager.
 - e. If AGENCY is or becomes during the term of this Agreement, self-insured or a member of a self-insurance pool, AGENCY shall provide coverage equivalent to the insurance coverages and endorsements required above. The COUNTY will not accept such coverage unless the COUNTY determines, in its sole discretion and by written acceptance, that the coverage proposed to be provided by AGENCY is equivalent to the above-required coverages.
 - f. All insurance afforded by AGENCY pursuant to this Agreement shall be primary to and not contributing to all insurance or self-insurance maintained by the COUNTY. An endorsement shall be provided on all policies which shall waive any right of recovery (waiver of subrogation) against the COUNTY.
 - g. Insurance coverages in the minimum amounts set forth herein shall not be construed to relieve AGENCY for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude the COUNTY from taking such other actions as are available to it under any other provision of this Agreement or otherwise in law.
 - h. Failure by AGENCY to maintain all such insurance in effect at all times required by this Agreement shall be a material breach of this Agreement by AGENCY. COUNTY, at its sole

option, may terminate this Agreement and obtain damages from AGENCY resulting from said breach. Alternatively, COUNTY may purchase such required insurance coverage, and without further notice to AGENCY, COUNTY shall deduct from sums due to AGENCY any premiums and associated costs advanced or paid by COUNTY for such insurance. If the balance of monies obligated to AGENCY pursuant to this Agreement is insufficient to reimburse COUNTY for the premiums and any associated costs, AGENCY agrees to reimburse COUNTY for the premiums and pay for all costs associated with the purchase of said insurance. Any failure by COUNTY to take this alternative action shall not relieve AGENCY of its obligation to obtain and maintain the insurance coverages required by this Agreement.

6. Intellectual Property Provisions.

a. Federal Funding.

In any agreement funded in whole or in part, by the Federal government, COUNTY may acquire and maintain the Intellectual Property rights, title, and ownership, which result directly or indirectly from the agreement, except as provided in 37 CFR Part 401.14. However, pursuant to 29 CFR Section 97.34 the Federal government shall have a royalty-free, non-exclusive, irrevocable, paid-up license throughout the world to use, duplicate, or dispose of such Intellectual Property throughout the world in any manner for governmental purposes and to have and permit others to do so.

AGENCY further agrees that this Agreement is subject to and shall be governed by 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

b. Ownership.

1) Except where COUNTY has agreed in a signed writing to accept a license, COUNTY shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all Intellectual Property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by AGENCY and which result directly or indirectly from this Agreement.

2) For the purposes of this Agreement, Intellectual Property means recognized protectable rights and interest such as: patents (whether or not issued), copyrights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will, any data or information maintained, collected or stored in the ordinary course of business by COUNTY, and all other legal rights protecting intangible proprietary information as may exist now and/or hereafter come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.

(a) For the purpose of the definition of Intellectual Property, "works" means all literary works, writings, and printed matter including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works

of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos, computer software and any other materials or products created, produced, conceptualized and fixed in a tangible medium of expression. It includes preliminary and final products and any materials and information developed for the purposes of producing those final products. "Works" does not include articles submitted to peer review or reference journals or independent research projects.

- 3) In the performance of this Agreement, AGENCY may exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this Agreement. In addition, under this Agreement, AGENCY may access and utilize certain of COUNTY's Intellectual Property in existence prior to the effective date of this Agreement. Except as otherwise set forth herein, AGENCY shall not use any of COUNTY's Intellectual Property now in existence or hereafter existing for any purposes without the prior written permission of COUNTY. Except as otherwise set forth herein, neither the AGENCY nor COUNTY shall give any ownership interest in or rights to its Intellectual Property to the other Party. If during the term of this Agreement, AGENCY accesses any third-party Intellectual Property that is licensed to COUNTY, AGENCY agrees to abide by all license and confidentiality restrictions applicable to COUNTY in the third-party's license agreement.
 - 4) AGENCY agrees to cooperate with COUNTY in establishing or maintaining COUNTY's exclusive rights in the Intellectual Property and in assuring COUNTY's sole rights against third parties with respect to the Intellectual Property. If the AGENCY enters into any agreements or subcontracts with other parties in order to perform this Agreement, AGENCY shall require the terms of the agreement(s) to include all Intellectual Property provisions of paragraph 6.a. through 6.i. Such terms must include, but are not limited to, AGENCY assigning and agreeing to assign to COUNTY all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by AGENCY or COUNTY and which result directly or indirectly from this Agreement or any subcontract.
 - 5) Pursuant to paragraph 6.b.4), the requirement for the AGENCY to include all Intellectual Property provisions of paragraph 6.a. through 6.i. in all agreements and subcontracts it enters into with other parties does not apply to agreements or subcontracts that are for customized and on-the-job training as authorized under 20 CFR 680.700-750.
 - 6) AGENCY further agrees to assist and cooperate with COUNTY in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and enforce COUNTY's Intellectual Property rights and interests.
- c. Retained Rights/License Rights.
- 1) Except for Intellectual Property made, conceived, derived from, or reduced to practice by AGENCY or COUNTY and which result directly or indirectly from this Agreement, AGENCY shall retain title to all of its Intellectual Property to the extent such Intellectual Property is in existence prior to the effective date of this Agreement. AGENCY hereby grants to COUNTY, without additional compensation, a permanent, non-exclusive, royalty free, paid-up, worldwide, irrevocable, perpetual, non-terminable license to use, reproduce, manufacture, sell, offer to sell, import, export, modify, publicly and privately display/perform, distribute, and dispose of AGENCY's Intellectual Property with the right

to sublicense through multiple layers, for any purpose whatsoever, to the extent it is incorporated in the Intellectual Property resulting from this Agreement, unless AGENCY assigns all rights, title and interest in the Intellectual Property as set forth herein.

- 2) Nothing in this provision shall restrict, limit, or otherwise prevent AGENCY from using any ideas, concepts, know-how, methodology or techniques related to its performance under this Agreement, provided that AGENCY's use does not infringe on the patent, copyright, trademark rights, license or other Intellectual Property rights of COUNTY or third party, or result in a breach or default of any provisions of paragraph 6.a. through 6.i. or result in a breach of any provisions of law relating to confidentiality.

d. Copyright.

- 1) AGENCY agrees that for purposes of copyright law, all works (as defined in Ownership, paragraph 6.b.2)(a)) of authorship made by or on behalf of AGENCY in connection with AGENCY's performance of this Agreement shall be deemed "works made for hire." AGENCY further agrees that the work of each person utilized by AGENCY in connection with the performance of this Agreement will be a "work for hire," whether that person is an employee of AGENCY or that person has entered into an agreement with AGENCY to perform the work. AGENCY shall enter into a written agreement with any such person that: (i) all work performed for AGENCY shall be deemed a "work made for hire" under the Copyright Act and (ii) that person shall assign all right, title, and interest to COUNTY to any work product made, conceived, derived from or reduced to practice by AGENCY or COUNTY and which result directly or indirectly from this Agreement. (Refer to 2 CFR 200.35.)
- 2) All materials, including, but not limited to, computer software, visual works or text, reproduced or distributed pursuant to this Agreement that include Intellectual Property made, conceived, derived from, or reduced to practice by AGENCY or COUNTY and which result directly or indirectly from this Agreement may not be reproduced or disseminated without prior written permission from COUNTY.

e. Patent Rights.

With respect to inventions made by AGENCY in the performance of this Agreement, which did not result from research and development specifically included in the Agreement's scope of work, AGENCY hereby grants to COUNTY a license as described under paragraph 6.c. for devices or materials incorporating or made through the use of such inventions. If such inventions result from research and development work specifically included within the Agreement's scope of work, then AGENCY agrees to assign to COUNTY, without additional compensation, all its right, title and interest in and to such inventions and to assist COUNTY in securing United States and foreign patents with respect thereto.

f. Third-Party Intellectual Property.

Except as provided herein, AGENCY agrees that its performance of this Agreement shall not be dependent upon or include any Intellectual Property of AGENCY or any third party without first: (i) obtaining COUNTY's prior written approval; and (ii) granting to or obtaining for COUNTY, without additional compensation, a license, as described in paragraph 6.c., for any of AGENCY's or third party's Intellectual Property in existence prior to the effective date of this Agreement. If such a license upon these terms is unattainable, and COUNTY determines

that the Intellectual Property should be included in or is required for AGENCY performance of this Agreement, AGENCY shall obtain a license under terms acceptable to COUNTY.

g. Warranties.

1) AGENCY represents and warrants that:

- (a) It has secured and will secure all rights and licenses necessary for its performance of this Agreement.
 - (b) Neither AGENCY's performance of this Agreement, nor the exercise by either Party of the rights granted in this Agreement, nor any use, reproduction, manufacture, sale, offer to sell, import, export, modification, public and private display/performance, distribution, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by AGENCY or COUNTY and which result directly or indirectly from this Agreement will infringe upon or violate any Intellectual Property right, non-disclosure obligation, or other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any state, the United States, or any foreign country. There are currently no actual or threatened claims by any such third party based on an alleged violation of any such right by AGENCY.
 - (c) Neither AGENCY's performance nor any part of its performance will violate the right of privacy of, or constitute a libel or slander against, any person or entity.
 - (d) It has secured and will secure all rights and licenses necessary for Intellectual Property including, but not limited to, consents, waivers or releases from all authors.
 - (e) It has not granted and shall not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights granted to COUNTY in this Agreement.
 - (f) It has appropriate systems and controls in place to ensure that state and federal funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
 - (g) It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way AGENCY's performance of this Agreement.
- 2) COUNTY makes no warranty that the Intellectual Property resulting from this Agreement does not infringe upon any patent, trademark, copyright or the like now existing or subsequently issued.

h. Intellectual Property Indemnity.

- 1) AGENCY shall indemnify, defend and hold harmless COUNTY and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products ("Indemnities") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses, court costs, and attorney's fees

- incurred in investigating, preparing, serving as a witness in, or defending against, any such claim action, or proceeding, commenced or threatened) to which any of the Indemnities may be subject, whether or not AGENCY is a party to any pending or threatened litigation, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of AGENCY pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of COUNTY's use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by AGENCY or COUNTY and which result directly or indirectly from this Agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that was issued after the effective date of this Agreement. COUNTY reserves the right to participate in and/or control, at AGENCY's expense, any such infringement action brought against COUNTY.
- 2) Should any Intellectual Property licensed by AGENCY to COUNTY under this Agreement become the subject of an Intellectual Property infringement claim, AGENCY will exercise its authority reasonably and in good faith to preserve COUNTY's right to use the licensed Intellectual Property in accordance with this Agreement at no expense to COUNTY. COUNTY shall have the right to monitor and appear through its own counsel (at AGENCY's expense) in any such claim or action. In the defense or settlement of the claim, AGENCY may obtain the right for COUNTY to continue using the licensed Intellectual Property or, replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property becomes non-infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, COUNTY may be entitled to a refund of all monies paid under this Agreement, without restriction or limitation of any other rights and remedies available at law or in equity.
- 3) AGENCY agrees that damages alone would be inadequate to compensate COUNTY for breach of any term of these Intellectual Property provisions of paragraph 6.a. through 6.i. by AGENCY. AGENCY acknowledges COUNTY would suffer irreparable harm in the event of such breach and agrees COUNTY shall be entitled to obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.
- i. Survival.
- The provisions set forth herein shall survive any termination or expiration of this Agreement or any project schedule.

7. Assurances.

- a. COUNTY shall obey the provisions of WIOA, the regulations and guidelines enacted pursuant to WIOA, and the terms of the WIOA grant agreements from the Federal and State government to COUNTY.
- b. AGENCY may access WIOA and the regulations issued to implement WIOA at www.doleta.gov/wioa/. AGENCY will be notified of changes and/or amendments affecting WIOA or the regulations as soon as possible after they are made known to COUNTY.

- c. AGENCY shall accept persons into its program(s) who have been referred by COUNTY's Employers' Training Resource or its authorized agent(s) unless such persons are not eligible or suitable for AGENCY's program(s) pursuant to WIOA and this Agreement.

8. Confidentiality Requirements.

- a. COUNTY and AGENCY will exchange various kinds of information pursuant to this Agreement. That information will include Personally Identifiable Information (PII), data, applications, program files, and databases. These data and information are confidential when they define an individual or an employing unit or when the disclosure is restricted or prohibited by any provision of law. Confidential information requires special precautions to protect it from unauthorized use, access, disclosure, modification, and destruction. The sources of information may include, but are not limited to, the Employment Development Department, California Department of Social Services, California Department of Education, California Department of Corrections and Rehabilitation, County Welfare Department(s), County IV-D Directors Office of Child Support, Office of the District Attorney, California Department of Mental Health, California Office of Community Colleges, and the Department of Alcohol and Drug Programs.
- b. AGENCY agrees to keep all information that is exchanged between COUNTY in the strictest confidence and make such information available to its own employees only on a "need-to-know" basis.
- c. AGENCY shall provide security sufficient to ensure the protection of confidential information from improper use and disclosures including sufficient administrative, physical, and technical safeguards to protect this information from reasonable unanticipated threats to the security or confidentiality of the information.
- d. Federal law, OMB Guidance, and DOL policies require that PII and other sensitive information be protected. To ensure compliance with Federal law and regulations, AGENCY must secure the storage and transmission of PII and sensitive data developed, obtained, or otherwise associated with WIOA funds:
 - 1) To ensure PII is not transmitted to unauthorized users, all PII and other sensitive data transmitted via email or stored on CDs, DVDs, hard drives, USB flash drives, or other removable media must be encrypted using Federal Information Processing Standards (FIPS) 140-2 compliant and National Institute of Standards and Technology (NIST) validated cryptographic module.
 - 2) AGENCY must take steps necessary to ensure the privacy of all PII obtained from participants and/or other individuals and to protect such information from unauthorized disclosure.
 - 3) AGENCY shall ensure that any PII used during the performance of activities associated with COUNTY have been obtained in conformity with this Agreement and applicable Federal and state laws governing the confidentiality of information.
- e. AGENCY agrees to comply with section 444 of the General Education Provisions Act (20 U.S.C. 1232g) as added by the Family Educational Rights and Privacy Act of 1974. AGENCY shall provide written instructions to all of its employees with access to information of a

confidential nature of the penalties for unauthorized use or disclosure found in sections 1798.53 and 1798.55 of the Civil Code, section 502 of the Penal Code, section 2111 of the Unemployment Insurance Code, section 10850 of the Welfare and Institutions Code and other applicable local, State and Federal laws. COUNTY shall provide AGENCY with copies of the aforementioned code sections. Changes and/or amendments affecting these code sections will be issued to AGENCY as soon as possible after they are made available to COUNTY.

- f. AGENCY shall (where it is appropriate) store and process information in electronic format, in such a way that unauthorized persons cannot reasonably retrieve the information by means of a computer, remote terminal or other means. AGENCY shall return the confidential information promptly and destroy all copies or derivations of that confidential information when its use ends, utilizing an approved method of confidential destruction: shredding, burning or certified or witnessed destruction. Magnetic media are to be degaussed or returned to the entity that provided it.
- g. If AGENCY enters into an agreement with a third party to provide WIOA services, AGENCY agrees to include these data and security and confidentiality requirements in the agreement with that third party. In no event shall said information be disclosed to any individual outside of that third party's authorized staff, subcontractor(s), service providers, or employees.
- h. AGENCY shall designate a person responsible for the security and confidentiality of the data and immediately notify the Assistant County Administrative Officer for COUNTY's Employers' Training Resource, or his/her designee, in writing, of any designee changes. AGENCY's data security confidentiality designee is:

Name:
Title:
Address:

Telephone:
Fax No.:
Email:

9. Term.

- a. This Agreement shall be in effect from July 1, 2020 through June 30, 2021 while COUNTY's WIOA program is in effect and funded by grants from the Federal and State governments to COUNTY, except that AGENCY shall continue to retain the records of its WIOA-funded program(s) for three (3) years as provided in paragraph 3.b. above.
- b. Within thirty (30) days of AGENCY receipt of a fully signed and executed Agreement, AGENCY must demonstrate to COUNTY's satisfaction that the contracted program has commenced operations. AGENCY assumes all liability for expenses or activities commencing by AGENCY before the Agreement is executed.

10. Termination.

- a. Either AGENCY or COUNTY may request a termination, in whole or in part, for convenience upon sixty (60) days written notice to the other party. If WIOA funds available to COUNTY are terminated or reduced, COUNTY may, at its sole discretion, terminate or reduce AGENCY's funding described in "Exhibits "C" upon five (5) days written notice to AGENCY
- b. In addition to and without limiting the above, if, through any cause, AGENCY substantially fails to fulfill in a timely and proper manner its obligations under this Agreement, or if AGENCY substantially violates any of the terms or stipulations of the Agreement, COUNTY shall thereupon have the right to terminate this Agreement in whole or in part by giving written notice to AGENCY of such termination which shall also specify the effective date thereof. Such notice must be given at least fifteen (15) days before the effective date of such termination.
- c. Notwithstanding the above, AGENCY shall not be relieved of liability to COUNTY for damages sustained by COUNTY by virtue of any breach of the Agreement by AGENCY, and COUNTY may withhold any payments to AGENCY for the purpose of setoff until such time as the exact amount of repayment due COUNTY from AGENCY is determined.
- d. In the event of the termination of this Agreement for any reason, COUNTY shall have no further obligation to pay for any services rendered or expenses incurred by AGENCY after the effective date of the termination, and AGENCY shall repay to COUNTY, within thirty (30) days of the notification of termination, all payments made by COUNTY to AGENCY which were unearned.

11. Notices.

Any and all notices relating to this Agreement shall be sufficient if personally served upon the Clerk of the Board of Supervisors of COUNTY or the clerk or the secretary of AGENCY or if sent via the United States Postal Service, postage prepaid, and if directed to COUNTY, addressed as follows:

Clerk of the Board of Supervisors
Kern County Administrative Center
1115 Truxtun Avenue, 5th Floor
Bakersfield, CA 93301

or directed to AGENCY, addressed as follows:

Contact Person(s):

12. Grievance Procedure and Venue.

- a. If COUNTY and AGENCY are unable to mutually resolve any disputes which may arise between the parties relating to this Agreement, AGENCY may file a complaint with COUNTY at 1600 E. Belle Terrace, Bakersfield, California 93307. A grievance officer shall be appointed to review the dispute and attempt to resolve the matter with the parties. If the dispute is still

not resolved, AGENCY may request a hearing with a hearing officer appointed by COUNTY. If the dispute remains unresolved, AGENCY may appeal to the State Review Panel of the Governor of the State of California. If there is still no resolution to the dispute, AGENCY may file an action in a court of law.

- b. The parties hereto acknowledge that this Agreement was executed and services and obligations are to be performed in Kern County, and, therefore, both parties agree that if any party to this Agreement initiates any legal or equitable action to enforce the terms of this Agreement, to declare the rights of the parties under this Agreement or which relates to this Agreement in any manner, the proper venue for any such action is the Superior Court of the State of California of and for the County of Kern.

13. Construed According to California Law.

COUNTY and AGENCY agree that the provisions of this Agreement will be construed in accordance with the laws of the State of California.

14. No Authority to Bind COUNTY.

It is understood that AGENCY, in its performance of any and all duties under this Agreement, has no authority to bind COUNTY to any agreements or undertakings with respect to any and all persons or entities with whom AGENCY deals in the course of its business.

15. Modifications and Amendments.

- a. This Agreement may be unilaterally modified or amended in writing by the COUNTY under the following circumstances:
 - 1) There is an increase or decrease in local, state, or federal funding levels.
 - 2) To implement adjustments to AGENCY's plans, goals, and/or objectives.
 - 3) Funds awarded to the AGENCY have not been expended in accordance with the Agreement. After consultation with the AGENCY, COUNTY has determined that funds will not be spent in a timely manner, and such funds are for that reason to the extent permitted by and in a manner consistent with local, state, and federal law, regulations, and policies, reverting to the COUNTY.
 - 4) The term of the Agreement is changed.
 - 5) There is a change in local, state, or federal law or regulation requiring a change in the provisions of this Agreement.
 - 6) The AGENCY's name has changed. Upon receipt of legal documentation of the name change COUNTY will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
- b. Except as provided above, this Agreement may be amended or modified only in writing by the mutual agreement of both COUNTY and AGENCY.

16. Nonwaiver.

No covenant or condition of this Agreement to be performed by AGENCY can be waived except by the written consent of COUNTY. Forbearance or indulgence by COUNTY in any regard whatsoever shall not constitute a waiver of any covenant or condition to be performed by AGENCY. COUNTY shall be entitled to invoke any remedy available to COUNTY under this Agreement or by law or in equity despite any such forbearance or indulgence.

17. Independent Contractor.

In the performance of the services under this Agreement, AGENCY shall be and acknowledges that AGENCY is in fact and law, an independent contractor and not an agent or employee of COUNTY. AGENCY has and retains the right to exercise full supervision and control over the manner and methods of providing services to COUNTY under this Agreement. AGENCY retains full supervision and control over the employment, direction, compensation, and discharge of all persons assisting AGENCY in the provision of services under this Agreement. With respect to AGENCY's employees, if any, AGENCY shall be solely responsible for payment of wages, benefits and other compensation, compliance with all occupational safety, welfare and civil rights laws, tax withholding and payment of employment taxes whether Federal, State or local, and compliance with any and all other laws regulating employment.

18. Assignment.

AGENCY shall not assign any right, title or interest it may acquire by reason of this Agreement except after first obtaining the written consent of COUNTY.

19. Conflict of Interest.

The parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 of the California Government Code relating to conflict of interest of public officers and employees. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of the COUNTY relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, COUNTY may immediately terminate this Agreement by giving written notice thereof. AGENCY shall comply with the requirements of Government Code Section 87100 et seq. during the term of this Agreement.

20. Signature Authority.

Each person executing this Agreement on behalf of AGENCY represents and warrants that he or she is duly authorized by AGENCY to execute and deliver this Agreement on behalf of AGENCY and that this Agreement is binding upon AGENCY in accordance with its terms. Prior to commencing any work under this Agreement, AGENCY shall deliver documentation of AGENCY's governing body authorizing or ratifying the execution of this Agreement to COUNTY's Employers' Training Resource.

IN WITNESS WHEREOF, COUNTY and AGENCY have caused this Agreement to be executed by their respective officers and agents as of the day and year first above written.

EMPLOYERS' TRAINING RESOURCE,
COUNTY OF KERN

AGENCY

Teresa Hitchcock
Assistant County Administrative Officer

Name
Title

APPROVED AS TO FORM
Office of County Counsel

Deputy

2020-21 WIOA

ATTACHMENT I-B: CONTRACT POLICIES AND CONDITIONS

In addition to the requirements outlined in the sample County Subgrant Agreement Boilerplate found at Attachment I-A, the Agency must meet other requirements including:

1. The contract resulting from this RFP will be a reimbursement contract. The Agency will be responsible for all expenses and will be reimbursed after billing ETR with an Operator's Expense Report. The Agency must have adequate resources to cover these costs.
2. The Agency is responsible for identifying and recruiting eligible qualified participants to meet contractual objectives.
3. The Agency will have 15 days to return the final signed contract. If this is not possible, the Agency must provide their assigned ETR analyst with the date this will be accomplished.
4. The Agency must be able to commence operation of the program within 30 days of the date the final contract is signed. If the Agency is non-responsive or does not meet the time requirement proposed, funding may be withdrawn.
5. The Agency must have current fiscal and compliance audits as required by law, and must have provided them to ETR for review. If findings have been identified, corrections must be made or an action plan must be approved by ETR prior to funding. For new service providers, a pre-award survey may be conducted prior to funding.
6. The Agency is required to be an Equal Opportunity (EO) employer. If selected for funding, the Agency must, per EDD Workforce Services Directive (WSD) 17-01, "designate an individual who will be responsible for the developing and publishing of complaint procedures and the processing of complaints as required by 29 CFR Section 38.72 through 38.75." The Agency may be required to submit their EO Plan for review to ETR. Agencies without an approved plan may adopt ETR's EO plan.
9. The Agency shall use its best efforts to meet the planned participant objectives and program goals. ETR reserves the right to review performance relative to contracted goals, and if the Agency is deemed to be non-compliant, then ETR may rescind or withhold funding from the Agency.
10. The Agency will be reimbursed for actual and necessary costs incurred while operating the program(s), providing the Agency can justify that costs charged are reasonable and necessary.
11. The Agency must receive prior written approval from ETR before entering into any equipment leases, property leases or subcontracts; or the purchase of equipment (including sets of items, i.e. computers for a computer lab) with an acquisition cost of five thousand dollars (\$5000) or more if any of the cost will be a direct charge to grant funds paid to the Agency in accordance with an entered agreement with ETR. Any such acquisitions purchased with WIOA funds requires prior written approval from ETR and possibly the State or the Department of Labor prior to purchase. Failure to receive prior approval for these expenses may result in disallowed costs.
12. The Agency's personnel policies shall be available in written form upon request. The Agency shall maintain written detailed job descriptions, which shall include the required credentials, diploma/degree, and years of experience required for each staff position funded under this subgrant to assist in substantiating claims for payment of staff salaries.

13. Payment to the Agency shall be made only upon the Agency performing its duties to ETR's satisfaction and upon the Agency submitting a properly documented claim. Such claim shall be submitted to ETR's finance department by the tenth day of the following month.
14. The Agency will allow its fiscal and program records to be monitored or audited by ETR staff or designee, the WDB, County of Kern, State of California, and/or U.S. Department of Labor.
15. The Agency certifies that, under ETR's reimbursement contract policy, costs charged under the agreement are reasonable and necessary with respect to the cost of providing services/training, and at no time will payments to the Agency exceed the actual costs of the program.
16. The Agency shall utilize established coordination procedures and contractual safeguards to ensure that WIOA funds are used in addition to funds otherwise available in the area. The Agency shall inform ETR of any public or private funds including, but not limited to, Average Daily Attendance (ADA), Full Time Equivalency (FTE), CalWORKs, etc., received by the agency in support of programs funded under the subgrant. Use of such funds will be considered in negotiating budgets.
17. To avoid the possibility of duplication of federal funds, the Agency shall clearly identify available WIOA, CalWORKs, Pell Grants or other supplemental funds, and inform ETR of the amounts and disposition of those funds. The participant awarded a Pell Grant shall be party to an agreement with ETR and the Agency which indicates the portion of the grant to be applied to the cost of tuition, fees, and books. The Agency will not require participants to apply for a loan or incur personal debt. The Agency shall provide written documentation of the source of any other such funds used for WIOA participants during training to ETR to be utilized as leverage.
18. The Agency shall inform ETR of any public funds received by the Agency or the participant. Offsets received by the Agency in excess of the total amount reimbursed by ETR shall be returned to ETR upon demand. ETR shall not be liable for increased costs if the participant enrolled in the Agency's program fails to qualify for public funds. The Agency cannot terminate participants already enrolled in the Agency's program due to the participant's failure to qualify for the public funding source.
21. Information concerning participants is confidential. Confidential information, i.e. Personally Identifiable Information (PII), is not available to the public, and the Agency must protect it from loss, unauthorized use, access, disclosure, modification, and destruction. The Agency shall not communicate confidential information or PII to any third party without the express consent of ETR. Information in electronic format must be maintained in such a way that unauthorized persons cannot retrieve the information by computer, remote terminal, or other means.
22. An authorized official of the Agency must sign the proposal. The Agency is required to submit resolutions or other corporate actions by its Board of Directors or other governing body, designating the person(s) authorized to obligate the Agency and to execute contract documents, sign checks for the disbursement of funds received from ETR, and to sign requisitions for advances and/or reimbursements (monthly invoices).
23. The Agency ensures, by signing the contract, that the negotiated price or services provided in a contract cannot be changed without ETR approval and a modification or amendment to the contract. All requests for modification or amendment must be submitted to ETR with written justification.

24. No funds provided under WIOA shall be used to induce the relocation of an establishment, or part thereof, that results in loss of employment for any employee of such establishment at the original location, until 120 days after the date on which such establishment commences operations at the new location.
25. All participants enrolled in wage-paid activities will be paid wages which shall not be less than the minimum wage under the applicable State or local minimum wage law.
26. A participant in a program or activity authorized under Title I of WIOA must not displace (including a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits) any currently employed unsubsidized employee. A program or activity authorized under Title I of WIOA must not impair an existing contract for services or collective bargaining agreement. A participant in a program or activity funded under WIOA may not be employed in or assigned to a job if: (A) Any other individual is on layoff from the same or any substantially equivalent job; (B) The employer has terminated the employment of any regular, unsubsidized employee or otherwise caused an involuntary reduction in its workforce with the intention of filling the vacancy so created with WIOA participants; or (C) The position opening disrupts the promotional line of succession of currently employed workers.

ATTACHMENT I-C: APPLICABLE RESOURCES

Below is a list of websites with applicable resources available for reference purposes. For more information about a particular topic or agency, please access the websites provided.

Workforce Innovation and Opportunity Act (WIOA) – www.doleta.gov/wioa

State of California Employment Development Department (EDD) – www.edd.ca.gov

County of Kern – www.kerncounty.com

Eligible Training Provider List (ETPL) – www.caljobs.ca.gov under “Job Seekers, Education Services”

Employers’ Training Resource (ETR) – www.etronline.com

2017-2020 Workforce Development Board of Kern, Inyo and Mono Counties Local Plan - <http://www.etronline.com/wib/KIM-WDB-Local-Plan-2017-2020.pdf>

2017-2021 Workforce Development Board of Kern, Inyo and Mono Counties Biennial Modification of the Local Plan - <http://www.etronline.com/pdf/local-plan-2017-2021.pdf>

ATTACHMENT I-D: FORMAT AND DOCUMENT ORDER

The following chart lists the order of documents that must be included in the proposal package. This may also be used as a checklist to help ensure submission of a complete proposal package. **Please submit: one (1) hard original of threshold documents and financial statements per agency, even if applying for multiple programs; one (1) hard original plus three (3) hard copies of the application; and one (1) electronic copy of the application on a virus-free flash drive.**

1. THRESHOLD DOCUMENTS <i>Agency need only complete <u>one set</u> of Threshold Documents.</i>		<input type="checkbox"/>
Organizational Summary/Signature Page	Attachment II-A	<input type="checkbox"/>
Certification of Proposal Content By Authorized Representative	Attachment II-B	<input type="checkbox"/>
Nondebarment Certification	Attachment II-C	<input type="checkbox"/>
Certification Regarding Lobbying	Attachment II-D	<input type="checkbox"/>
Drug-Free Workplace Certification	Attachment II-E	<input type="checkbox"/>
Child Support Compliance Act Certification	Attachment II-F	<input type="checkbox"/>
Disallowed Costs Statement	Attachment II-G	<input type="checkbox"/>
Certificate of Good Standing	Attachment II-H	<input type="checkbox"/>
Certificate of Compliance	Attachment II-I	<input type="checkbox"/>
2. FINANCIAL STATEMENTS (Required to be submitted)		
Financial Statements (See Section I-D for more information)		<input type="checkbox"/>
3. PROPOSAL NARRATIVE FORM		
a. Organization Summary		<input type="checkbox"/>
b. Capabilities and Demonstrated Ability		<input type="checkbox"/>
c. Service Model and Ease of Use		<input type="checkbox"/>
d. Pricing Model and Costs		<input type="checkbox"/>
f. Sample Quotes		<input type="checkbox"/>