

CONTRACT

35083

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3 THIS CONTRACT ("Contract") is entered into, in duplicate, effective as of
4 September 13, 2018, for reference purposes only, pursuant to a minute order adopted by
5 the City Council of the City of Long Beach at its meeting held on July 18, 2017, by and
6 between SJM CONSULTING, LLC, a Pennsylvania limited liability company ("Contractor"),
7 with offices located at 506 E. Murdoch Road, Philadelphia, Pennsylvania 19119, and the
8 CITY OF LONG BEACH, a municipal corporation ("City") and administering entity for
9 Pacific Gateway Workforce Investment Network.

10 WHEREAS, City submitted an application ("Application") to the Employment
11 Development Department of the State of California (the "State"), for funds to provide
12 meaningful training and employment opportunities for economically disadvantaged,
13 unemployed and underemployed persons consistent with the Workforce Investment Act of
14 1998 ("WIA") codified as Section 504 of the Rehabilitation Act, 29 U.S.C. 794(d) and all
15 regulations, directives, policies, procedures and amendments issued thereto and/or
16 legislation, regulations, policies, directives, and/or procedures which may replace the
17 Workforce Investment Act; and

18 WHEREAS, Congress reauthorized the Workforce Investment Act of 1998
19 on July 22, 2014 as the "Workforce Innovation and Opportunity Act (WIOA)" to provide
20 workforce investment activities, through statewide and local workforce investment systems
21 such as Pacific Gateway Workforce Investment Network (PGWIN), administered by the
22 City of Long Beach; and

23 WHEREAS, the Application was approved by the State and a Workforce
24 Investment Act/Workforce Innovation and Opportunity Act subgrant has been executed by
25 and between the State and the City authorizing such programs and providing the funding
26 therefore under Workforce Investment Act/Workforce Innovation and Opportunity Act
27 Master Subgrant Agreement which has been designated as K9110025 CFDA No. 17.258
28 and 17.278 the ("Prime Contract"); and

1 WHEREAS, Contractor desires to participate in said program and is qualified
2 by procurement for the reason of experience, preparation, organization, staffing and
3 facilities to provide services; and

4 WHEREAS, City is willing to utilize Contractor to provide program
5 deliverables such as economic competitiveness and asset mapping, sector opportunities
6 study, and entrepreneurial accelerator;

7 NOW, THEREFORE, in consideration of the mutual terms, covenants, and
8 conditions in this Agreement, the parties agree as follows:

9 1. DOCUMENT INCORPORATION.

10 A. The following documents are attached hereto as exhibits and
11 incorporated herein and made a part hereof by this reference as if fully set forth:

12 i. The Prime Contract, Exhibit "A", and any extension or
13 continuation thereof or any grant agreement which is the successor thereto
14 which authorizes a training and employment program for the economically
15 disadvantaged, unemployed and underemployed persons, and the
16 documents incorporated therein and attachments thereto, including the
17 assurances and certifications made by the State to the City.

18 ii. Contractor's program description, statement of work
19 performed, Contractor's operation plan for participants, program conditions
20 and standards for Contractor's performance under this Contract (collectively,
21 the "Statement of Work") attached hereto as Exhibit "B".

22 B. Contractor and City agree to be bound by all the terms,
23 conditions and provisions contained in the Prime Contract, the Application, and the
24 Statement of Work (collectively, the "Contract Documents").

25 C. Contractor hereby agrees to assume full responsibility for the
26 performance of the operation, coordination and administration of such program
27 pursuant to all the terms and conditions of the exhibits to the extent that said
28 documents are applicable to the delivery of services by Contractor hereunder; and

1 the parties hereto agree to perform all duties, obligations and tasks to be performed
2 by each party under the Contract Documents.

3 D. In the event there is any conflict between the provisions of this
4 Contract and the provisions of the Prime Contract, including the attachments thereto
5 and the documents incorporated therein, as presently worded or amended in the
6 future, the parties agree that the provisions of the Prime Contract shall control.

7 Contractor shall conduct training and employment activities in accordance
8 with the provisions of the Contract Documents.

9 2. TERM.

10 A. The term of this Contract ("Term") shall be deemed to have
11 commenced as of July 1, 2018, and unless sooner terminated pursuant to the
12 provisions hereof, shall terminate on June 30, 2019. Either of the parties hereto
13 shall have the right to terminate this Contract in its entirety at any time during the
14 Term for any or no reason whatsoever by giving fifteen (15) days prior written notice
15 of termination to the other party. City shall have the additional right to cancel any
16 part of this Contract at any time during the Term for any reason whatsoever by giving
17 fifteen (15) days' notice of such cancellation to the Contractor.

18 B. Notwithstanding the foregoing, the City shall have the right to
19 terminate and cancel this Contract without notice, in its sole discretion, if the actions
20 or non-action of Contractor subjects the City to liability, legal obligations or program
21 operation obligations beyond the liability and obligations under the Contract
22 Documents. If this Contract is terminated prior to the expiration of the Term,
23 Contractor shall be reimbursed for all eligible program allowable costs which have
24 been accrued but not paid through the effective date of termination. Contractor
25 agrees to accept such amount, plus all amounts previously paid, as full payment
26 and satisfaction of all obligations of City to Contractor.

27 3. AWARD UNDER SPECIAL CONDITIONS. The City may award a
28 contract under special conditions if it determines the Contractor as "high risk" under the

1 following categories:

2 A. (1) A history of unsatisfactory performance, or (2) Is not
3 financially stable, or (3) Has a management system which does not meet the
4 management standards, or (4) Has not conformed to terms and conditions of
5 previous awards, or (5) Is otherwise not responsible; and if the City determines that
6 an award will be made, special conditions and/or restrictions shall correspond to the
7 high risk condition and shall be included in the award.

8 B. Special conditions or restrictions may include: (1) Payment on
9 a reimbursement basis; (2) Withholding authority to proceed to the next phase until
10 receipt of evidence of acceptable performance within a given funding period; (3)
11 Requiring additional, more detailed financial reports; (4) Additional project
12 monitoring; (5) Requiring the Contractor to obtain technical or management
13 assistance; or (6) Establishing additional prior approvals.

14 C. If the City decides to impose such conditions, the City will either
15 include such corrective action in the Statement of Work or notify the Contractor as
16 early as possible, in writing, of: (1) The nature of the special conditions/restrictions;
17 (2) The reason(s) for imposing them; (3) The corrective actions which must be taken
18 before they will be removed and the time allowed for completing the corrective
19 actions and (4) The method of requesting reconsideration of the conditions or
20 restrictions imposed.

21 4. PERFORMANCE REVIEW.

22 A. After each quarter during the Term, the City will conduct a
23 review of Contractor's performance by comparing the Contractor's planned
24 performance and/or contract earning levels with the actual performance and
25 contract earning levels achieved by Contractor. If the Contractor is ten percent
26 (10%) or more below their planned total at the end of the first quarter or any quarter
27 thereafter, the City has the right to unilaterally cancel the contract or de-obligate
28 funds up to the amount of the under expenditure or underperformance.

1 Alternatively, upon review and approval of the City, Contractor may be allowed to
2 submit a corrective action plan demonstrating that program performance is
3 attainable and expenditure levels can be met. At the discretion of the City,
4 Contractor may be allowed to continue program services.

5 B. Underperformance at the end of the second quarter or any
6 quarter thereafter, shall permit the City to unilaterally cancel this Contract or, in the
7 alternative and at the sole discretion of the City, deobligate funds from this Contract
8 up to the amount of the underexpenditures.

9 5. CONTRACT AMOUNT AND PAYMENT.

10 A. The total amount which shall be payable by City to Contractor
11 for Contractor's allowable services during the Term shall not exceed One Hundred
12 Fifty Thousand Dollars (\$150,000).

13 B. The City shall, in due course, reimburse the Contractor for the
14 actual, allowable, reasonable and necessary costs and expenses incurred by
15 Contractor in the performance of this Contract which are authorized and approved
16 by Exhibit "B" and are in accordance with and pursuant to the Prime Contract, to the
17 extent that such Prime Contract is applicable to the Contractor's performance
18 hereunder.

19 C. Payment to the Contractor shall be limited to the amounts
20 specified in Exhibit "B" for the categories, criteria and rates established in said
21 Exhibit. The allocation of the total contract amount among the items in the Budget
22 may vary by as much as ten percent (10%) without the approval by Workforce
23 Investment Board's Executive Director ("Executive Director"). Additionally,
24 Contractor may, with the prior written approval of the Executive Director or his
25 designee, make adjustments within and among the categories of expenditures in
26 the Budget in excess of ten percent (10%), and modify the performance to be
27 rendered hereunder as provided in Exhibit "B"; provided, however, that any such
28 adjustment in expenditures shall not result in an increase in the amount of the total

1 contract. The agent or representative of Contractor who signs as the maker of
2 checks or drafts or in any manner authorizes the disbursement of said funds or
3 expenditure of same shall be covered by a blanket fidelity or comprehensive crime
4 bond regarding the handling of said funds in an amount set out in Section 13,
5 paragraph E of this Contract.

6 D. Contractor shall not charge nor receive compensation under
7 this Contract for any services or expenses unless said services or expenses are
8 directly and exclusively related to the purposes of this Contract, and provided that
9 payment is not also received by Contractor from some other source for said services
10 or expenses.

11 E. Disbursement of funds received from the State shall be under
12 the direction of the City Manager or his designee and shall be in accordance with
13 the provisions of this Contract and made pursuant to the Prime Contract and any
14 additional procedures, regulations and reporting requirements which are
15 established by the City that do not conflict with applicable procedures, regulations
16 and reporting requirements of the State.

17 F. All payments to Contractor by the City will be based upon
18 invoices and the necessary supporting documents which the State and the City may
19 require Contractor to submit. The expenditure of all funds shall be accounted for
20 promptly and submitted with the funded "Period of Availability" for the program year.
21 Reimbursement will not be made for claims generated beyond contract end date or
22 ninety (90) days after the contract end date for properly accrued expenditures.
23 Contractor shall keep separate detailed accounts for each expenditure for each
24 component part of this project.

25 G. Public or private non-profit contractor revenues in excess of
26 costs are considered program income or profits in accordance with Code of Federal
27 Regulations definition of "Income" pursuant to 29 CFR 97.32(2). When authorized,
28 program income may be added to the funds committed to the grant agreement. The

1 program income shall be used for the purposes and under the conditions of the grant
2 agreement or as amended unless the Governor of the State of California requires
3 that such income be turned over to the State.

4 6. RECORDS.

5 A. Records relating to the performance of this Contract shall be
6 kept and maintained by Contractor in accordance with the manner and method
7 prescribed by applicable State regulations and guidelines and City requirements,
8 and will be current, complete and available for purposes of inspection and audit
9 during business hours as deemed necessary upon request by representatives of
10 federal, state and local agencies.

11 B. Contractor shall provide access to all documents and materials
12 related to this Contract and shall provide any information that the City, or its
13 designee requires in order to monitor and evaluate Contractor's performance
14 hereunder. All such records shall be maintained and accessible for a period of
15 seven (7) years from the expiration or earlier termination of this Contract.

16 7. FINANCIAL REPORTS.

17 A. Contractor shall promptly distribute to the City Manager or his
18 designee copies of all correspondence including, but not limited to, financial,
19 operational and performance reports which Contractor submits to or receives from
20 the State. Contractor shall provide such other reports, documents or information as
21 may be requested or required by the City or the State within three (3) days of written
22 request. Upon expiration or earlier termination of this Contract, and within the time
23 and in the manner prescribed by the City, the Contractor shall perform all necessary
24 close-out procedures required by the State and the City, including preparation of
25 close-out reports and transmittal to the City of all documents in the possession of
26 Contractor which relate to the Conduct of the Program, within the time and in the
27 manner prescribed by the City. Final payment to the Contractor under this Contract
28 will be paid only after the City has determined that Contractor has satisfactorily

1 completed said close-out procedures.

2 B. If the Contractor is subject to the Single Audit Act (SAA), the
3 Contractor shall include this Contract within the scope of the SAA audit. A copy of
4 the SAA final audit report shall be delivered by Contractor to the City of Long Beach
5 within thirty (30) calendar days after its request and, in any event, no later than six
6 (6) months after the end of the then-current fiscal year of Contractor. In the event
7 the Contractor fails to comply with this requirement, the Contractor shall be liable
8 for any costs incurred by City for a substitute audit or review.

9 8. ACCOUNTING PROCEDURES.

10 A. On a monthly basis, commencing on the last day of the month
11 next succeeding the Effective Date of this Contract, the Contractor will submit an
12 invoice with supporting documentation for payment based upon the cost categories
13 in Exhibit "B". These invoices will be due by the tenth (10th) working day after the
14 end of each month. Contractor shall complete the monthly payment requests in the
15 format required by the City.

16 B. The Contractor will establish separate account numbers within
17 its accounting system to account for the expenditures and revenues of this Contract.
18 The Contractor's accounting system will be in compliance with all applicable
19 procedures and Federal and State authorities having jurisdiction over this Contract,
20 and shall be consistent with the fiscal and accounting procedures, including accruals
21 set forth herein. Without limiting the generality of the foregoing, the Contractor shall
22 adhere to the following fiscal and accounting procedures:

23 i. Maintain a bank account and perform monthly bank
24 reconciliations.

25 (a) Deposit all receipts in the bank account promptly
26 and intact.

27 (b) Do not pay any expense directly out of cash
28 receipts.

1 (c) Maintain bank validated copies for every deposit
2 slip in chronological order. Each deposit slip should include sufficient
3 detail to explain the source of the funds being deposited. (This may
4 be done by recording the details on the deposit slip or by attached
5 supporting documentation which may have been received with the
6 receipts).

7 (d) Disburse all funds by check, preferably signed or
8 approved electronically by two (2) employees, neither of whom is the
9 bookkeeper or the accounting clerk.

10 ii. Designate specific employees to perform each of the
11 following functions:

12 (a) Receipt for goods and services provided to
13 Contractor.

14 (b) Approve the purchase of goods and services for
15 Contractor.

16 (c) Approve employee time sheets.

17 (d) Each above function shall be designated to a
18 different employee.

19 iii. Maintain documented support for every check written
20 which should include:

21 (a) Original invoice from each vendor.

22 (b) Indication by signature and date of an authorized
23 employee that the goods or services were received by the Contractor.
24 This may be done on a separate receiving report, a copy of a packing
25 slip or on the invoice itself.

26 (c) Indication that the goods or services were
27 approved for purchase by an authorized individual. This should be by
28 signature and date and should appear on the invoice or on the

1 purchase order or purchase requisition, if such is used by the
2 Contractor.

3 iv. Maintain a copy of each invoice submitted to the
4 Operations Division with copies of all supporting documents.

5 v. Maintain the following records in an orderly fashion by
6 grant period or Contractor's fiscal year:

7 (a) Bank statements and bank reconciliations.

8 (b) Deposit slips and supports.

9 (c) Checks and supports.

10 (d) Time sheets or documentation to verify

11 Contractor's labor costs.

12 (e) Cash receipts and cash disbursement journals.

13 (f) Requests for reimbursement and supports.

14 (g) Financial statements.

15 (h) Maintain and file all required tax and personnel

16 reports with appropriate agencies.

17 vi. Contractor must adhere to all audit requirements as
18 outlined in Contractor's respective OMB Circular, 29 CFR 95, and 29 CFR
19 Part 96, and A 133, 29 CFR 97.26 and 29 CFR 95.26 as applicable.

20 C. All invoices and billings will be considered final and must be
21 submitted within forty-five (45) calendar days from the end of the Term. Resolution
22 of disputed matters must be resubmitted within fifteen (15) calendar days from date
23 mailed to Contractor. City, in its sole discretion, may elect not to pay any invoices
24 or billings submitted after the cut-off date, or if funding is no longer available.

25 9. INDEPENDENT CONTRACTOR STATUS. It is distinctly understood
26 that in the performance of this Contract, the Contractor shall at all times be considered a
27 wholly independent contractor and that Contractor's obligations to and authority from the
28 City are solely as are preserved by this Contract. Contractor expressly warrants that it will

1 not, at any time, hold itself out or in any manner represent that Contractor or any of its
2 agents, volunteers, subscribers, members, officers or employees are in any manner the
3 officers, employees or agents of the City or the Pacific Gateway Workforce Investment
4 Network (Network), an unincorporated non-profit association. Contractor shall not have
5 any authority to bind the City or Network at any time or for any purpose. Contractor nor
6 any of Contractor's officers, employees or agents shall have any power or authority as
7 agents or employees of the City or Network and shall not be entitled to any of the rights,
8 privileges or benefits of a City or Network employee.

9 10. ASSIGNMENT AND SUBCONTRACTING. This Agreement
10 contemplates the personal services of Contractor and Contractor's employees, and the
11 parties acknowledge that a substantial inducement to City for entering this Agreement was
12 and is the professional reputation and competence of Contractor and Contractor's
13 employees. Contractor shall not assign its rights or delegate its duties under this
14 Agreement, or any interest in this Agreement, or any portion of it, without the prior approval
15 of City, except that Contractor may with the prior approval of the City Manager of City,
16 assign any moneys due or to become due the Contractor under this Agreement. Any
17 attempted assignment or delegation shall be void, and any assignee or delegate shall
18 acquire no right or interest by reason of an attempted assignment or delegation.
19 Furthermore, Contractor shall not subcontract any portion of its performance without the
20 prior approval of the City Manager or designee, or substitute an approved subconsultant
21 or contractor without approval prior to the substitution. Nothing stated in this Section shall
22 prevent Contractor from employing as many employees as Contractor deems necessary
23 for performance of this Agreement.

24 11. INDEMNITY.
25 A. Contractor shall indemnify, protect and hold harmless City, its
26 Boards, Commissions, and their officials, employees and agents ("Indemnified
27 Parties"), from and against any and all liability, claims, demands, damage, loss,
28 obligations, causes of action, proceedings, awards, fines, judgments, penalties,

1 costs and expenses, including attorneys' fees, court costs, expert and witness fees,
2 and other costs and fees of litigation, arising or alleged to have arisen, in whole or
3 in part, out of or in connection with (1) Contractor's breach or failure to comply with
4 any of its obligations contained in this Agreement, including any obligations arising
5 from the Project's compliance with or failure to comply with applicable laws, including all
6 applicable federal and state labor requirements including, without limitation, the
7 requirements of California Labor Code section 1770 *et seq.* or (2) negligent or willful acts,
8 errors, omissions or misrepresentations committed by Contractor, its officers,
9 employees, agents, subcontractors, or anyone under Contractor's control, in the
10 performance of work or services under this Agreement (collectively "Claims" or
11 individually "Claim").

12 B. In addition to Contractor's duty to indemnify, Contractor shall
13 have a separate and wholly independent duty to defend Indemnified Parties at
14 Contractor's expense by legal counsel approved by City, from and against all
15 Claims, and shall continue this defense until the Claims are resolved, whether by
16 settlement, judgment or otherwise. No finding or judgment of negligence, fault,
17 breach, or the like on the part of Contractor shall be required for the duty to defend
18 to arise. City shall notify Contractor of any Claim, shall tender the defense of the
19 Claim to Contractor, and shall assist Contractor, as may be reasonably requested,
20 in the defense.

21 C. If a court of competent jurisdiction determines that a Claim was
22 caused by the sole negligence or willful misconduct of Indemnified Parties,
23 Contractor's costs of defense and indemnity shall be (1) reimbursed in full if the
24 court determines sole negligence by the Indemnified Parties, or (2) reduced by the
25 percentage of willful misconduct attributed by the court to the Indemnified Parties.

26 D. The provisions of this Section shall survive the expiration or
27 termination of this Agreement.

28 12. EMPLOYMENT TRAINING ACT CLAUSES. Contractor shall

1 administer contract within the policies and procedures mandated by the Workforce
2 Investment Act of 1998, subsequently reauthorized as Workforce Innovation and
3 Opportunity Act, and the Network and agrees to comply with the following contract clauses,
4 as applicable, during the duration of the contract period:

- 5 A. Compliance with requirements and/or regulations related to
- 6 patent rights, copyrights, and rights in data;
- 7 B. Maintenance of records for 7 years;
- 8 C. The Equal Employment Opportunity Act provisions;
- 9 D. The Americans with Disabilities Act of 1990;
- 10 E. The Contract Work Hours and Safety Standards Act;
- 11 F. The Clean Air Act and Environmental Protection Agency
- 12 regulations;
- 13 G. The Energy Policy Conservation Act;
- 14 H. The Byrd Anti-Lobbying Amendment;
- 15 I. Veteran's Priority Provisions;
- 16 J. Whistle Blower Protection;
- 17 K. Buy American Requirements.

18 13. INSURANCE. Concurrent with the execution of this Contract by
19 Contractor, as a condition precedent to the effectiveness of this Contract, and in partial
20 performance of the obligations of indemnity assumed by Contractor under Section 11
21 above, Contractor shall procure and maintain during the Term at Contractor's expense:

22 A. Comprehensive General Liability in an amount not less than Two
23 Million Dollars (\$2,000,000.00) combined single limit for each occurrence or Four Million
24 Dollars (\$4,000,000.00) General Aggregate for bodily injury, personal injury and property
25 damage. The Indemnified Parties shall be covered as insureds in respect to liability arising
26 out of activities performed by or on behalf of the Contractor and coverage shall be in a form
27 acceptable to the Risk Manager of the City ("Risk Manager").

28 B. Automobile Liability in an amount not less than Five Hundred

1 Thousand Dollars (\$500,000.00) combined single limit per accident for bodily injury and
2 property damage covering owned, non-owned and hired vehicles.

3 C. Workers' Compensation as required by the Labor Code of the State of
4 California and Employers' Liability Insurance with limits of one Million Dollars
5 (\$1,000,000.00) per occurrence.

6 D. Accidental Medical, Death and Dismemberment Insurance for all
7 participants not entitled to workers' compensation benefits under the provisions of Section
8 3700 of the Labor Code of the State of California, unless this requirement has been waived
9 in writing by the Risk Manager. Said insurance shall have limits of not less than One
10 Hundred Thousand Dollars (\$100,000.00) Accident Medical and Twenty-Five Thousand
11 Dollars (\$25,000.00) Accidental Death and Dismemberment.

12 E. Blanket Honesty or Comprehensive Crime Bond in an amount of fifty
13 percent (50%) of sums payable under this Contract, or Twenty-Five Thousand Dollars
14 (\$25,000.00), whichever is higher, to safeguard the proper handling of funds by those
15 employee's agents or representatives of the Contractor who sign as the maker of checks
16 or drafts or in any manner authorize the disbursement or expenditure of said funds.

17 Each insurance policy shall be endorsed to provide that coverage shall not
18 be cancelled by either party, reduced in amount or in limits, except after thirty (30) days
19 prior written notice has been given to the City. All such insurance shall be primary and not
20 contributing to any other insurance or self-insurance maintained by the Indemnified Parties.

21 The insurance required hereunder shall be placed with carriers admitted to
22 write insurance in California, or carriers with a rating of or equivalent to A:VIII by A.M. Best
23 Company and may be subject to such self-insurance or deductible as may be approved by
24 the Risk Manager. Any Contractors which Contractor may use in the performance of
25 services under this Contract shall be required to maintain insurance in accordance with the
26 requirements here in Section 13.

27 Contractor shall furnish the City with certificates of insurance and with original
28 endorsements affecting coverage as required above. The certificates and endorsements

1 for each insurance policy shall be signed by a person authorized by that insurer to bind
2 coverage on its behalf. Policies written on a "claims made" basis shall provide for an
3 extended reporting period of not less than One Hundred Eighty (180) days. No claims
4 made policies shall be acceptable to City unless the City Manager determines that no
5 occurrence policy is available in the market for the particular risk being insured. Any
6 modification or waiver of the insurance requirements contained in this Contract shall only
7 be made with the written approval of the Risk Manager in accordance with established city
8 policy.

9 14. DRUG-FREE WORKPLACE. Contractor shall comply with
10 Government Code Sections 8350 et seq. and 29 CFR Part 98, in matters relating to
11 providing a drug-free workplace including, but not limited to, the following:

12 A. Publishing a statement notifying employees that unlawful
13 manufacture, distribution, dispensation, possession, or use of a controlled
14 substance is prohibited and specifying actions to be taken against employees for
15 violations, as required by Government Code Section 8355(a).

16 B. Establishing a Drug-Free Awareness Program as required by
17 Government Code Section 8355(b), to inform employees about all of the following:

- 18 i. The dangers of drug abuse in the workplace,
19 ii. The person's or organization's policy of maintaining a
20 drug-free workplace;
21 iii. Any available counseling, rehabilitation and employee
22 assistance programs, and
23 iv. Penalties that may be imposed upon employees for drug
24 abuse violations.

25 C. Ensuring that every employee who provides services under this

26 Contract:

- 27 i. Will receive a copy of Contractor's drug-free policy
28 statement, and

1 ii. Will agree to abide by the terms of Contractor's
2 statement as a condition of employment on this Contract:

3 D. Payments due Contractor may be subject to suspension or
4 termination for failure to carry out the requirements of Government Code Sections
5 8350 et seq. and 29 CFR Part 98, Debarment and Suspension; Drug Free
6 Workplace. As provided in Government Code Section 8357, the City shall not be
7 required to ensure that Contractor provides a drug-free workplace.

8 15. NONDISCRIMINATION.

9 A. In connection with performance of this Agreement and subject
10 to applicable rules and regulations, Contractor shall not discriminate against any
11 employee or applicant for employment because of race, religion, national origin,
12 color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap, or
13 disability. Contractor shall ensure that applicants are employed, and that employees
14 are treated during their employment, without regard to these bases. These actions
15 shall include, but not be limited to, the following: employment, upgrading, demotion
16 or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay
17 or other forms of compensation, and selection for training, including apprenticeship.

18 B. It is the policy of City to encourage the participation of
19 Disadvantaged, Minority and Women-owned Business Enterprises in City's
20 procurement process, and Contractor agrees to use its best efforts to carry out this
21 policy in its use of subconsultants and contractors to the fullest extent consistent
22 with the efficient performance of this Agreement. Contractor may rely on written
23 representations by subconsultants and contractors regarding their status.
24 Contractor shall report to City in May and in December or, in the case of short-term
25 agreements, prior to invoicing for final payment, the names of all subconsultants
26 and contractors hired by Contractor for this Project and information on whether or
27 not they are a Disadvantaged, Minority or Women-Owned Business Enterprise, as
28 defined in Section 8 of the Small Business Act (15 U.S.C. Sec. 637).

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16. EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in accordance with the provisions of the Ordinance, this Agreement is subject to the applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the Long Beach Municipal Code, as amended from time to time.

A. During the performance of this Agreement, the Contractor certifies and represents that the Contractor will comply with the EBO. The Contractor agrees to post the following statement in conspicuous places at its place of business available to employees and applicants for employment:

“During the performance of a contract with the City of Long Beach, the Contractor will provide equal benefits to employees with spouses and its employees with domestic partners. Additional information about the City of Long Beach’s Equal Benefits Ordinance may be obtained from the City of Long Beach Business Services Division at 562-570-6200.”

B. The failure of the Contractor to comply with the EBO will be deemed to be a material breach of the Agreement by the City.

C. If the Contractor fails to comply with the EBO, the City may cancel, terminate or suspend the Agreement, in whole or in part, and monies due or to become due under the Agreement may be retained by the City. The City may also pursue any and all other remedies at law or in equity for any breach.

D. Failure to comply with the EBO may be used as evidence against the Contractor in actions taken pursuant to the provisions of Long Beach Municipal Code 2.93 et seq., Contractor Responsibility.

E. If the City determines that the Contractor has set up or used its contracting entity for the purpose of evading the intent of the EBO, the City may terminate the Agreement on behalf of the City. Violation of this provision may be used as evidence against the Contractor in actions taken pursuant to the provisions of Long Beach Municipal Code section 2.93 et seq., Contractor Responsibility.

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1 17. CONFIDENTIALITY.

2 A. Contractor shall keep confidential all financial, operations, and
3 performance records relating to its performance of this Contract (“Data”) and shall
4 not disclosed the Data or use the Data directly or indirectly other than in the course
5 of services provided hereunder. The obligation of confidentiality shall continue
6 following expiration or earlier termination of this Contract. In addition, Contractor
7 shall keep confidential all information, whether written or oral, or visual, obtained by
8 any means whatsoever in the course of Contractor’s performance hereunder for the
9 same period of time. Contractor shall not disclose Data to any third party, nor use it
10 for Contractor’s own benefit or the benefit of others without first obtaining the prior
11 written authorization and consent of the City.

12 B. All Data and other information, in whatever form or medium,
13 compiled or prepared by Contractor in performing its services or furnished to
14 Contractor by City shall be the property of City and City shall have the unrestricted
15 right to use or disseminate same without payment of further compensation to
16 Contractor. Copies of Contractor’s work product may be retained by Contractor for
17 its own records.

18 18. BREACH OF CONFIDENTIALITY. Contractor shall not be liable for a
19 breach of confidentiality with respect to Data that:

20 A. Contractor demonstrates Contractor knew prior to the time City
21 disclosed it; or

22 B. Is or becomes publicly available without breach of this Contract
23 by Contractor; or

24 C. A third party who has a right to disclose such information does
25 so to Contractor without restrictions on further disclosure; or

26 D. Must be disclosed pursuant to subpoena, court order, state or
27 federal WIA rules and regulations, federal Department of Labor rules and
28 regulations, or the rules and regulations of any other governmental agency having

1 jurisdiction over WIA administration.

2 19. NOTICES. Any notice or approval required by this Agreement shall
3 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,
4 postage prepaid, addressed to Consultant at the address first stated above, and to the City
5 at 333 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager with a
6 copy to the Pacific Gateway's Executive Director at 3447 Atlantic Avenue, Long Beach, CA
7 90806. Notice of change of address shall be given in the same manner as stated for other
8 notices. Notice shall be deemed given on the date deposited in the mail or on the date
9 personal delivery is made, whichever occurs first.

10 20. CONTRACT ADMINISTRATION. The City Manager, or designee, is
11 authorized and directed, for and on behalf of the City, to administer this Contract and all
12 related matters, and any decision of the City Manager, or his designee, in connection
13 herewith shall be final.

14 21. CORPORATE STATUS. If the Contractor is a corporation, Contractor
15 shall, as a condition precedent to the effectiveness of this Contract, submit to City proof of
16 good standing of the corporate status.

17 22. ENTIRE AGREEMENT. This document fully expresses all
18 understandings of the parties concerning all matters covered and shall constitute the total
19 Agreement. Except for the adjustments of Exhibit "B" as provided in Section 5 hereof, no
20 addition to or alteration of the terms of this Contract whether by written or oral
21 understanding of the parties, their officers, agents or employees shall be valid unless made
22 in writing and formally adopted in the same manner as this Contract.

23 23. CAPTIONS AND ORGANIZATION. The various headings and
24 numbers herein and the grouping of the provisions of this Contract into separate Sections,
25 paragraphs and clauses are for the purpose of convenience only and shall not be
26 considered a part hereof, and shall have no effect on the construction or interpretation of
27 any part of this contract.

28 24. TAX REPORTING. As required by federal and state law, City is

1 obligated to and will report the payment of compensation to Contractor on Form 1099-Misc.
2 Contractor shall be solely responsible for payment of all federal and state taxes resulting
3 from payments under this Agreement. Contractor shall submit Contractor's Employer
4 Identification Number (EIN), or Contractor's Social Security Number if Contractor does not
5 have an EIN, in writing to City's Accounts Payable, Department of Financial Management.
6 Contractor acknowledges and agrees that City has no obligation to pay Contractor until
7 Contractor provides one of these numbers.

8 25. AUTHORIZATION TO EXECUTE. Contractor warrants and affirms to
9 City that any and all persons signing this Contract are authorized and empowered to so
10 sign and that the execution of this Contract by such person or persons does bind Contractor
11 to all terms, covenants and conditions of this Contract.

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OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

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IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed with all the formalities required by law on the respective dates set forth opposite their signatures.

SJM CONSULTING, LLC, a Pennsylvania limited liability company

October 11, 2018

By [Signature]
Name Sally A. Guzman
Title PRINCIPAL

_____, 2018

By _____
Name _____
Title _____

Tom Modica
Assistant City Manager
EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER

"Contractor"

CITY OF LONG BEACH, a municipal corporation

Oct 17, 2018

By [Signature]
City Manager

"City"

This Contract is approved as to form on Oct. 15, 2018.

CHARLES PARKIN, City Attorney

By [Signature]
Deputy

EXHIBIT A

WIOA SUBGRANT AGREEMENT

City of Long Beach, Pacific Gateway

SUBGRANT NO: K9110023
MODIFICATION NO: 1
SUBRECIPIENT CODE: LBC
UNIQUE ENTITY NO: 557398141
INDIRECT COST RATE:

PASS-THROUGH ENTITY:
State of California
Employment Development Dept.
Central Office Workforce
Services Division
P.O.Box 826880, MIC 69
Sacramento, CA 94280-0001

SUBRECIPIENT: City of Long Beach, Pacific Gateway
4811 Airport Plaza Drive, Suite 200
LONG BEACH, CA 90815
GOVERNMENTAL ENTITY:

Yes

This Subgrant Agreement is entered into by and between the State of California, Employment Development Department, hereinafter the Pass-through Entity, and the City of Long Beach, Pacific Gateway, hereinafter the Subrecipient. The Subrecipient agrees to operate a program in accordance with the provisions of this Subgrant and to have an approved Workforce Innovation and Opportunity Act (WIOA) Local Plan for the above named Pass-through Entity filed with the Pass-through Entity pursuant to the WIOA. This modification consists of this sheet and those of the following exhibits, which are attached hereto and by this reference made a part hereof.

- Funding Detail Chart
- Rapid Response by Formula
- Dislocated Worker Rd 1
- Adult Formula RD 1
- Rapid Response Layoff Aversion

ALLOCATION(s)	PRIOR AMOUNT	\$1,649,824.00
The Pass-through Entity agrees to reimburse the Subrecipient not to exceed the amount listed hereinafter 'TOTAL'	INCREASE/DECREASE:	\$483,914.00
	TOTAL:	\$2,133,738.00

TERM OF AGREEMENT
From: 4/1/2018 To: 6/30/2020

Terms of Exhibits are as designated on each exhibit

PURPOSE: The purpose of this modification is to incorporate First Round Workforce Innovation and Opportunity Act (WIOA) Formula funding for Program Year (PY) 2018-19 into grant codes 201, 292, 501 and 540.

APPROVED FOR PASS-THROUGH ENTITY (EDD)
(By Signature)

APPROVED FOR SUBRECIPIENT (By Signature)
Unilateral modification. Subrecipient Signature not required

Name and Title
JAIME GUTIERREZ
CHIEF
CENTRAL OFFICE WORKFORCE SERVICES
DIVISION

Name and Title

I hereby certify that to my knowledge, the budgeted funds are available for the period and purpose of expenditures as stated herein

This agreement does not fall within the meaning of Section 10295 of Chapter 2 of Part 2 of Division 2 of the Public Contract Code of the State of California and pursuant to 58 OPS Cal. Atty. Gen 586, is exempt from review or approval of the Dept. of General Services and the Dept. of Finance

Signature of EDD Accounting Officer

Budget Item: 7100 Fund: 0639 Budgetary Attachment: No
Chapter: 029 Statute: 2016 FY: 18/19

SUBGRANT AGREEMENT
FUNDING DETAIL SHEET

SUBGRANT NO:K9110023
MODIFICATION NO:1

City of Long Beach, Pacific Gateway

Funding Source	I. Allocation			Adjusted Allocation
	Prior Amount	Increase	Decrease	
WIA/WIOA 25% - Dislocated Worker Rapid Response				
98219 292 Rapid Response Layoff Aversion 07/01/2018 to 06/30/2019 Prog/Element 61/70 Ref 001 Fed Catig 17.278	\$0.00	\$13,268.00 ✓	\$0.00	\$13,268.00
98219 540 Rapid Response by Formula 07/01/2018 to 06/30/2019 Prog/Element 61/70 Ref 001 Fed Catig 17.278	\$0.00	\$47,041.00 ✓	\$0.00	\$47,041.00
Total WIA/WIOA 25% - Dislocated Worker Rapid Response	\$0.00	\$60,309.00	\$0.00	\$60,309.00
WIA/WIOA Formula				
98159 201 Adult Formula RD 1 07/01/2018 to 06/30/2020 Prog/Element 61/90 Ref 101 Fed Catig 17.258	\$0.00	\$240,169.00 ✓	\$0.00	\$240,169.00
98109 301 Youth Formula Rd 1 04/01/2018 to 06/30/2020 Prog/Element 61/90 Ref 101 Fed Catig 17.259	\$1,649,824.00	\$0.00	\$0.00	\$1,649,824.00
96209 501 Dislocated Worker Rd 1 07/01/2018 to 06/30/2020 Prog/Element 61/90 Ref 101 Fed Catig 17.278	\$0.00	\$183,436.00 ✓	\$0.00	\$183,436.00
Total WIA/WIOA Formula	\$1,649,824.00	\$423,605.00	\$0.00	\$2,073,429.00
Grand Total:	\$1,649,824.00 ✓	\$483,914.00 ✓	\$0.00	\$2,133,738.00 ✓

NARRATIVE

SUBGRANT NO:K9110023
MODIFICATION NO: 1

SUBRECIPIENT: City of Long Beach, Pacific Gateway
FAIN NO: AA-32213-18-55-A-6
FEDERAL AWARD DATE: 7/31/2018
FUNDING SOURCE: Adult Formula RD 1 - 201

TERM OF THESE FUNDS: 07/01/2018 - 06/30/2020

Use of funds added by this modification is limited to this period and additionally limited by the recapture provisions applicable to this funding source. The state may at its discretion recapture funds obligated under this exhibit, if expenditure plans are not being met.

PROGRAM NARRATIVE

Workforce Innovation and Opportunity Act (WIOA) Adult Formula funds are being incorporated into the Program Year (PY) 2018/19 Subgrant Agreement to support the WIOA Adult Program. The funds in grant code 201 consist of 1st round funding and are available for expenditure from July 1, 2018 through June 30, 2020. FAIN AA-32213-18-55-A-6

This exhibit adds to and does not replace the terms and conditions of any other exhibit included in this agreement which terms and conditions remain in full force and effect.

WIOA (2018)

NARRATIVE

**SUBGRANT NO:K9110023
MODIFICATION NO: 1**

**SUBRECIPIENT:City of Long Beach, Pacific Gateway
FAIN NO: AA-32213-18-55-A-6
FEDERAL AWARD DATE: 7/31/2018
FUNDING SOURCE: Rapid Response Layoff Aversion - 292**

TERM OF THESE FUNDS: 07/01/2018 - 03/30/2019

Use of funds added by this modification is limited to this period and additionally limited by the recapture provisions applicable to this funding source. The state may at its discretion recapture funds obligated under this exhibit, if expenditure plans are not being met.

PROGRAM NARRATIVE

Layoff Aversion funds are being incorporated into the Program Year (PY) 2018/19 Subgrant Agreement to support the Layoff Aversion Program. These funds will support local areas through a high-performing Rapid Response strategy, which will emphasize coordinated efforts to avert layoffs in the effort to save jobs. The term of these funds are from July 1, 2018 through June 30, 2019. FAIN AA-32213-18-55-A-6

This exhibit adds to and does not replace the terms and conditions of any other exhibit included in this agreement which terms and conditions remain in full force and effect.

WIDA (2015)

NARRATIVE

SUBGRANT NO:K9110023
MODIFICATION NO: 1

SUBRECIPIENT:City of Long Beach, Pacific Gateway
FAIN NO: AA-32213-18-55-A-8
FEDERAL AWARD DATE: 7/31/2018
FUNDING SOURCE: Dislocated Worker Rd 1 - 501

TERM OF THESE FUNDS: 07/01/2018 - 06/30/2020

Use of funds added by this modification is limited to this period and additionally limited by the recapture provisions applicable to this funding source. The state may at its discretion recapture funds obligated under this exhibit, if expenditure plans are not being met.

PROGRAM NARRATIVE

Workforce Innovation and Opportunity Act (WIOA) Dislocated Worker Formula funds are being incorporated into the Program Year (PY) 2018/19 Subgrant Agreement to support the WIOA Dislocated Worker Program. The funds in grant code 501 consist of 1st round funding and are available for expenditures from July 1, 2018 through June 30, 2020. FAIN AA-32213-18-55-A-8

This exhibit adds to and does not replace the terms and conditions of any other exhibit included in this agreement which terms and conditions remain in full force and effect.

WIOA (2015)

NARRATIVE

**SUBGRANT NO:K9110023
MODIFICATION NO: 1**

**SUBRECIPIENT:City of Long Beach, Pacific Gateway
FAIN NO: AA-32213-18-55-A-6
FEDERAL AWARD DATE: 7/31/2018
FUNDING SOURCE: Rapid Response by Formula - 540**

TERM OF THESE FUNDS: 07/01/2018 - 06/30/2019

Use of funds added by this modification is limited to this period and additionally limited by the recapture provisions applicable to this funding source. The state may at its discretion recapture funds obligated under this exhibit, if expenditure plans are not being met.

PROGRAM NARRATIVE

These Workforce Innovation and Opportunity Act (WIOA) 25 percent Rapid Response (RR) funds are being incorporated into your Program Year (PY) 2018/19 Subgrant Agreement to support the WIOA Dislocated Worker Program. The funds in grant code 540 consist of 1st round funding and are available for expenditures from July 1, 2018 through June 30, 2019. These "formula based" Rapid Response funds (see WSIM17-43) must be used for the cost of required and allowable Rapid Response activities in response to layoffs, business closures, and natural disasters. FAIN AA-32213-18-55-A-6

This exhibit adds to and does not replace the terms and conditions of any other exhibit included in this agreement which terms and conditions remain in full force and effect.

WIOA (2015)

EXHIBIT B
SCOPE OF WORK
Workforce Development Services

CONTRACTOR: SJM Consulting, Inc.
(Hereinafter referred to as "Contractor")

TERM: July 1, 2018 – June 30, 2019

AMOUNT: Not to Exceed \$150,000

CFDA #'S: TBD on as-needed basis (e.g. 17.258; 17.278; 17.259)

ABSTRACT: Provide services under RFP #HR 17-051 Workforce Development Services/Subject Matter Experts

A. SCOPE OF WORK

Under this agreement, SJM Consulting (Contractor) may perform the following tasks. Pacific Gateway's Executive Director shall outline specific deliverables under the following areas:

RFP Section 3.5.6 Workforce Intermediary

Project management services related to short-term workforce investment projects; special grants, and/or business/economic development initiatives, which may include limited assistance in leading customer services or managing project implementation tasks for special projects and grants; facilitate specialized meetings/events around specific WIB strategies, labor market surveys, partner convenings, etc.; and/or broker connections with various employers, labor, trade and/or business organizations.

RFP Section 3.5.10 Project Management

Provide Project Management to short-term or temporary workforce development initiatives and strategies, resulting from legislative changes, special initiatives, grant funding, and local collaborations.

B. PROJECT PERFORMANCE REQUIREMENTS

Contractor must maintain documentations relative to the project activities. Contractor must submit to Pacific Gateway a summary of all project activities. If Contractor cannot fulfill the obligations of this agreement, Contractor must notify Pacific Gateway's Executive Director in writing immediately. Underperformance by the Contractor shall permit the City to unilaterally cancel this agreement or, in the alternative, de-obligate funds up to the amount of the under expenditure/underperformance.

C. TECHNICAL ASSISTANCE & MANDATORY MEETINGS

Pacific Gateway shall provide program and administrative assistance to Contractor to ensure that project goals are met. This includes project overview and technical assistance. Contractor will be required to participate as an active and vested partner in mandatory meetings, trainings, and/or staff development sessions.

D. FINANCIAL REPORTING/INVOICING

Payments will be based upon demonstration of attainment of key deliverables noted in Section A above. Contractor shall include Activity Report/s demonstrating progress toward these deliverables on each invoice, as verified by Pacific Gateway's Executive Director. ***Pacific Gateway's Executive Director (or his designee) shall determine schedule of invoice submission, based upon completion of specific deliverables.*** Contractor will ensure invoices are accurate and submitted accordingly. Send invoices to: Pacific Gateway, 4811 Airport Plaza Drive, Suite 200, Long Beach, CA 90815, *Attention: Mildred Mota.*

E. GENERAL INFORMATION:

1. Unallowable Activities and Costs

Contractor shall comply with the following guidelines per Pacific Gateway, or reimbursement may be disallowed:

1. Political Activities: No financial assistance may be provided for any program, which involves political activities.
2. Maintenance of Effort:
 - a. No currently employed worker shall be displaced by any participant (including partial displacement, such as a reduction in hours or non-overtime work, wages or employment benefits).
 - b. No funds are to be used to assist, promote, or deter union organizing.
 - c. No program shall impair existing contracts for services or collective bargaining agreements without the written concurrence of the labor organization and employer concerned.
 - d. No participant shall be employed or job opening filled when (1) any other individual is on layoff from the same or any substantially equivalent job, or (2) when the employer has terminated employment with the intention of filling the vacancy so created by hiring a participant whose wages are subsidized under this contract.
 - e. No jobs shall be created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed individuals.
 - f. No person or organization may charge an individual a fee for the placement or referral of such individuals in or to a training program funded under this Act.

2. WIA/WIOA and Similar Programs Contract Clauses

Contractor shall administer contract within the policies and procedures mandated by the Workforce Investment Act of 1998 and Pacific Gateway and agrees to comply with the following WIA (and similar programs) contract clauses, as applicable, during the duration of the contract period:

1. Compliance with awarding agency requirement and/or regulations related to patent rights, copyrights, and rights in data;
2. Maintenance of records for 7 years;
3. The Equal Employment Opportunity Act provisions;
4. The Americans with Disabilities Act of 1990;
5. The Contract Work Hours and Safety Standards Act;
6. The Clean Air Act and Environmental Protection Agency regulations;
7. The Energy Policy Conservation Act;
8. The Bryd Anti-Lobbying Amendment;
9. The Debarment and Suspension requirements;
10. The Copeland "Anti-Kickback" Act;
11. The Davis-Bacon Act.

3. Administrative Dispute Resolution

Pacific Gateway and Contractor will communicate openly and directly to resolve any problems or disputes related to completing the contract in a cooperative manner and at the lowest level of intervention possible. Should information resolution efforts fail, the dispute shall be referred to the Chair of Pacific Gateway's Board who shall place the dispute upon the agenda of a regular or special meeting of the Executive Committee. The Executive Committee decision will be the final administrative decision.

4. Nepotism

Contractor may not hire, directly or through an employing agency, a person in an administrative capacity, staff position, or on-the-job training position funded under the Act if a member of that person's immediate family is engaged in an administrative capacity for that Contractor.

Immediate family is defined as a wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent and stepchild.

F. GENERAL PROVISIONS OF WIA/WIOA

Veterans' Priority Provisions: WIA/WIOA and similar funds funded by the U.S. Department of Labor are subject to the provisions of the "Jobs for Veterans Act" (JVA), Public Law 107-288 (38 USC 4215), as implemented by the Final Rule published on December 19, 2008 at 73 Fed. Reg. 78132. The JVA provides priority of service to veterans and spouses of

certain veterans for the receipt of employment, training, and placement services. In addition, in accepting these WIA/WIOA funds, Contractor assures that they will comply with the Veterans' Priority Provisions established by the Jobs for Veterans Act (38 USC 4215).

Wage Rate Requirements: Subject to further clarification issued by the Office of Management and Budget and notwithstanding any other provision of law and in a manner consistent with other provisions of WIA/WIOA and similar funds, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Contractor pursuant to this award shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and section 3145 of title 40, United States Code. (ARRA Sec. 16064)

Whistleblower Protection: Each Contractor and their sub-contractor (if applicable) awarded funds made available under WIA/WIOA and similar funds shall promptly refer to the Grantor Office of Inspector General any credible evidence that a principal, employee, agent, contractor, subrecipient, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds.