

CONTRACT

31550

THIS CONTRACT ("Contract") is entered into, in duplicate, effective as of the 1st day of January, 2010, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting held on January 5, 2010, by and between NEW HORIZONS COMPUTER LEARNING CENTERS, INC., a California corporation, with offices located at 1900 S. State College Blvd., Suite 100, Anaheim, CA 92806, ("Provider") and the CITY OF LONG BEACH, a municipal corporation ("City") and administering entity for the Pacific Gateway Workforce Investment network.

1. Recitals. This Contract is made with reference to the following facts and objectives:

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

1.2 The Application was approved by the State and a Workforce Investment Act subgrant has been executed by and between the State and the City authorizing such programs and providing the funding therefore under Workforce Investment Act Master Subgrant Agreement, which has been designated as No. K074146 the ("Prime Contract"); and

1.3 Provider desires to participate in said program and is qualified by reason of experience, preparation, organization, staffing and facilities to provide services;

1 1.4 City is willing to utilize Provider to provide vocational training
2 services in computer technology occupations.

3 NOW, THEREFORE, in consideration of the terms and conditions
4 contained herein, it is mutually agreed by and between the parties hereto as follows:

5 **SECTION 1. DOCUMENT INCORPORATION.**

6 The following documents are attached hereto as exhibits and incorporated
7 herein and made a part hereof by this reference as if set forth in full herein:

8 A. The Prime Contract, Exhibit "A", and any extension or continuation
9 thereof or any grant agreement which is the successor thereto which authorizes
10 ongoing vocational training for adult and dislocated worker residents and the
11 documents incorporated therein and attachments thereto, including the
12 assurances and certifications made by the City to the State.

13 B. Provider's program description, statement of work to be performed,
14 Provider's operation plan for participants, program conditions and standards for
15 Provider's performance under this Contract (collectively, the "Scope of Work")
16 attached hereto as Exhibit "B".

17 Provider and City agree to be bound by all the terms, conditions and
18 provisions contained in the Prime Contract, the Application, and Statement of Work
19 (collectively, the "Contract Documents"). Provider hereby agrees to assume full
20 responsibility for the performance of the operation, coordination and administration of
21 such program pursuant to all the terms and conditions of Exhibits "A" and "B" to the
22 extent that said documents are applicable to the delivery of services by Provider
23 hereunder; and the parties hereto agree to perform all duties, obligations and tasks to be
24 performed by each party under the Contract Documents. In the event there is any
25 conflict between the provisions of this Contract and the provisions of the Prime Contract,
26 including the attachments thereto and the documents incorporated therein, as presently
27 worded as or amended in the future, the parties agree that the provisions of the Prime
28 Contract shall control.

1 Provider shall provide vocational training in computer technology
2 occupations in accordance with the provisions of the Contract Documents.

3 **SECTION 2. TERM.**

4 The term of this Contract ("Term") shall be deemed to have commenced as
5 of June 1, 2009 and unless sooner terminated pursuant to the provisions hereof, shall
6 terminate on December 31, 2010. Either of the parties hereto shall have the right to
7 terminate this Contract in its entirety at any time during the Term for any or no reason
8 whatsoever by giving fifteen (15) days prior written notice of termination to the other
9 party. City shall have the additional right to cancel any part of this Contract at any time
10 during the Term for any reason whatsoever by giving fifteen (15) days notice of such
11 cancellation to the Provider.

12 Notwithstanding the foregoing, the City shall have the right to terminate and
13 cancel this Contract without notice, in its sole discretion, if the actions or non-action of
14 Provider subjects the City to liability, legal obligations or program operation obligations
15 beyond the liability and obligations under the Contract Documents. If this Contract is
16 terminated prior to the expiration of the term, Provider shall be reimbursed for all eligible
17 program costs which have accrued but not been paid through the effective date of
18 termination. Provider agrees to accept such amount, plus all amounts previously paid, as
19 full payment and satisfaction of all obligations of City to Provider.

20 **SECTION 3. CONTRACT AMOUNT AND PAYMENT.**

21 The total amount which shall be payable by City to Provider for Provider's
22 services during the Term shall not exceed Four Hundred Thousand Dollars
23 (\$400,000.00).

24 The City shall, in due course, reimburse the Provider for the actual,
25 reasonable and necessary costs and expenses incurred by Provider in the performance
26 of this Contract which are authorized and approved and in accordance with and pursuant
27 to the Prime Contract, to the extent that such Prime Contract is applicable to the
28 Provider's performance hereunder. Such payments by the City shall be made only from

1 funds received by City under the Prime Contract and shall be payable only after the City
2 receives said funds with which to make such payments.

3 Disbursement of funds received from the State shall be under the direction
4 of the City Manager or his designee and shall be in accordance with the provisions of this
5 Contract and made pursuant to the Prime Contract and any additional procedures,
6 regulations and reporting requirements which are established by the City that do not
7 conflict with applicable procedures, regulations and reporting requirements of the State.

8 **SECTION 4. RECORDS.**

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

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

19 **SECTION 5. FINANCIAL REPORTS.**

20 Provider shall promptly distribute to the City Manager or his designee
21 copies of all correspondence including, but not limited to, financial, operational and
22 performance reports which Provider submits to or receives from the State. Provider shall
23 provide such other reports, documents or information as may be requested or required by
24 the City or the State within three (3) days of written request. Final payment to the
25 Provider under this Contract will be paid only after the City has determined that Provider
26 has satisfactorily completed said vocational training.

27 If the Provider is subject to the Single Audit Act (SAA), the Provider shall
28 include this Contract within the scope of the SAA audit. A copy of the SAA final audit

1 report shall be delivered by Provider to the City of Long Beach within thirty (30) calendar
2 days after its completion and, in any event, no later than six (6) months after the end of
3 the then-current fiscal year of Provider. In the event the Provider fails to comply with this
4 requirement, the Provider shall be liable for any costs incurred by City for a substitute
5 audit or review.

6 **SECTION 6. INDEPENDENT PROVIDER STATUS.**

7 It is distinctly understood that in the performance of this Contract, the
8 Provider shall at all times be considered a wholly independent Provider and that
9 Provider's obligations to and authority from the City are solely as are prescribed by this
10 Contract. Provider expressly warrants that it will not, at any time, hold itself out or in any
11 manner represent that Provider or any of its agents, volunteers, subscribers, members,
12 officers or employees are in any manner the officers, employees or agents of the City or
13 the Pacific Gateway Workforce Investment Board (PGWIB), an unincorporated non-profit
14 association. Provider shall not have any authority to bind the City or PGWIB at any time
15 or for any purpose. Provider nor any of Provider's officers, employees or agents shall
16 have any power or authority as agents or employees of the City or PGWIB and shall not
17 be entitled to any of the rights, privileges or benefits of the City or PGWIB employee.

18 **SECTION 7. ASSIGNMENT.**

19 Provider shall not delegate its duties or assign its rights hereunder, either in
20 whole or in part, without the prior written consent of the City.

21 **SECTION 8. INDEMNIFICATION AND HOLD HARMLESS.**

22 Provider expressly agrees to defend, protect, indemnify and hold PGWIB,
23 the City, their respective officers, employees and agents ("indemnified parties"), free and
24 harmless from and against any and all claims, damages, expenses, loss or liability of any
25 kind or nature whatsoever growing out of, or resulting from the acts or omissions of
26 Provider, its officers, agents or employees in the performance of this Contract. Provider
27 shall, at its own cost, expense and risk, defend all claims or legal actions that may be
28 instituted against either the indemnified parties and Provider shall pay any settlement

1 entered into or satisfy any judgment that may be rendered against either the indemnified
2 parties as a result of said acts or omissions of Provider, its officers, agents or employees
3 in the performance of this Contract.

4 **SECTION 9. INSURANCE.**

5 Concurrent with the execution of this Contract by Provider, as a condition
6 precedent to the effectiveness of this Contract, and in partial performance of the
7 obligations of indemnity assumed by Provider under Section 10 above, Provider shall
8 procure and maintain during the Term at Provider's expense.

9 A. Comprehensive General Liability in an amount not less than
10 Two Million Dollars (\$2,000,000) combined single limit for each
11 occurrence or Four Million Dollars (\$4,000,000) General Aggregate for
12 bodily injury, personal injury and property damage. The indemnified
13 parties shall be covered as additional insureds in respects to liability
14 arising out of activities performed by or on behalf of the Provider and
15 coverage shall be in a form acceptable to the Risk Manager of the City
16 ("Risk Manager").

17 B. Automobile Liability in an amount not less than Five Hundred
18 Thousand Dollars (\$500,000) combined single limit per accident for bodily
19 injury and property damage covering owned, non-owned and hired
20 vehicles.

21 C. Workers' Compensation as required by the Labor Code of
22 the State of California and Employers' Liability Insurance with limits of One
23 Million Dollars (\$1,000,000) per occurrence.

24 D. Accidental Medical, Death and Dismemberment Insurance
25 for all participants not entitled to workers' compensation benefits under the
26 provisions of Section 3700 of the Labor Code of the State of California,
27 unless this requirement has been waived in writing by the Risk Manager.
28 Said insurance shall have limits of not less than One Hundred Thousand

1 Dollars (\$100,000) Accident Medical and Twenty-Five Thousand Dollars
2 (\$25,000) Accidental Death and Dismemberment.

3 E. Blanket Honesty or Comprehensive Crime Bond in an
4 amount of fifty percent (50%) of sums payable under this Contract, or
5 Twenty-Five Thousand Dollars (\$25,000), whichever is higher, to
6 safeguard the proper handling of funds by those employee's agents or
7 representatives of the Provider who sign as the maker of checks or drafts
8 or in any manner authorize the disbursement or expenditure of said funds.

9 Each insurance policy shall be endorsed to provide that coverage shall not
10 be cancelled by either party, reduced in amount or in limits, except after thirty (30) days
11 prior written notice has been given to the City. All such insurance shall be primary and
12 not contributing to any other insurance or self-insurance maintained by the indemnified
13 parties.

14 The insurance required hereunder shall be placed with carriers admitted to
15 write insurance in California, or carriers with a rating of or equivalent to A:VIII by A.M.
16 Best Company and may be subject to such self-insurance or deductible as may be
17 approved by the Risk Manager. Any subcontractors which Provider may use in the
18 performance of services under this Contract shall be required to maintain insurance in
19 accordance with the requirements of this section.

20 Provider shall furnish the City with certificates of insurance and with original
21 endorsements affecting coverage as required above. The certificates and endorsements
22 for each insurance policy shall be signed by a person authorized by that insurer to bind
23 coverage on its behalf. Policies written on a "claims made" basis shall provide for an
24 extended reporting period of not less than one hundred eighty (180) days. No claims
25 made policies shall be acceptable to City unless the City Manager determines that no
26 occurrence policy is available in the market for the particular risk being insured. Any
27 modification or waiver of the insurance requirements contained in this contract shall only
28 be made with the written approval of the Risk Manager in accordance with established

1 City policy.

2 **SECTION 10. NON-DISCRIMINATION.**

3 In connection with performance of this Contract and as refined by
4 applicable federal laws, rules and regulations, Provider shall not discriminate in
5 employment or in the performance of this Contract on the basis of race, religion, national
6 origin, color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap, or
7 disability.

8 It is the policy of City to encourage the participation of
9 Disadvantaged, Minority and Women-Owned Business Enterprises in
10 City's procurement process, and Provider agrees to use its best efforts to
11 carry out this policy in the award of all approved subcontracts to the fullest
12 extent consistent with the efficient performance of this Contract. Provider
13 may rely on written representations by subcontractors regarding their
14 status. Provider shall report to City in March and in September or, in the
15 case of short-term agreements, prior to invoicing for final payment, the
16 names of all sub-consultants engaged by Provider for this Project and
17 information on whether or not they are a Disadvantaged, Minority or
18 Women-Owned Business Enterprise, as defined in Section 8 of the Small
19 Business Act (15 U.S.C. Sec. 637).

20 **SECTION 11. NOTICES.**

21 All notices required or given pursuant to the provisions hereof may be
22 served either by: (1) enclosing the same in a sealed envelope addressed to the party
23 intended to receive the same at the address indicated herein and deposited postage
24 prepaid, in the U.S. Postal Service as certified mail, return receipt requested, or (2)
25 personal service. Such notices shall be effective on the date personal service is effected
26 or the date of the signature on the return receipt. For the purposes hereof, the address of
27 the City and the proper party to receive any such notices in its behalf is the City Manager,
28 City Hall, 333 West Ocean Boulevard, Long Beach, California 90802; and Provider's

1 address for service of any such notices shall be NEW HORIZONS COMPUTER
2 LEARNING CENTERS, 1900 S. State College Blvd., Suite 100, Anaheim, California
3 92806, Attention Cindy Sutherland, Telephone (714) 221-3122, Fax. No. (714) 938-1900

4 **SECTION 12. CONTRACT ADMINISTRATION.**

5 The City Manager, or designee, is authorized and directed, for and on
6 behalf of the City, to administer this Contract and all related matters, and any decision of
7 the City Manager, or his designee, in connection herewith shall be final.

8 **SECTION 13. ENTIRE AGREEMENT.**

9 This document fully expresses all understandings of the parties concerning
10 all matters covered and shall constitute the total Agreement. Except for the adjustments
11 of Exhibits "A" and "B" as provided in Section 4 hereof, no addition to or alteration of the
12 terms of this Contract whether by written or oral understanding of the parties, their
13 officers, agents or employees shall be valid unless made in writing and formally adopted
14 in the same manner as this Contract.

15 **SECTION 14. CAPTIONS AND ORGANIZATION.**

16 The various headings and numbers herein and the grouping of the
17 provisions of this Contract into separate Sections, paragraphs and clauses are for the
18 purpose of convenience only and shall not be considered a part hereof, and shall have no
19 effect on the construction or interpretation of any part of this contract.

20 **SECTION 15. TAX IDENTIFICATION NUMBER.**

21 Provider's Tax Identification Number is XXXXXXXXXX

22 **SECTION 16. AUTHORIZATION TO EXECUTE.**

23 Provider warrants and affirms to City that any and all persons signing this
24 Contract are authorized and empowered to so sign and that the execution of this Contract
25 by such person or persons does bind Provider to all terms, covenants and conditions of
26 this Contract.

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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.

NEW HORIZONS COMPUTER LEARNING CENTERS, a California corporation

Dated: _____, 2010

By [Signature] 3/10/10
Title Director of Career Development

Dated: _____, 2010

By Kevin M. Lundy 3-11-10
Title CEU

"Provider"

CITY OF LONG BEACH, a municipal corporation

Assistant City Manager

Dated: March 23, 2010

By [Signature] EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.
City Manager

"City"

The foregoing Contract is hereby approved as to form this 18th day of March, 2010.

ROBERT E. SHANNON, City Attorney

By [Signature] Deputy

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

EXHIBIT A

Dist. WIA 9/4/09

WIA SUBGRANT AGREEMENT

REGISTRATION NO: K074146
MODIFICATION NO: NEW
SUBGRANTEE CODE: LBC

CITY OF LONG BEACH

SUBGRANTOR: State of California
Employment Development Dept.
Workforce Services Division
P.O. Box 826880, MIC 69
Sacramento, CA 94280-0001

SUBGRANTEE: CITY OF LONG BEACH
3447 ATLANTIC AVENUE
LONG BEACH, CA 90807

GOVERNMENTAL ENTITY: YES

This Subgrant Agreement is entered into by and between the State of California, Employment Development Department, hereinafter the Subgrantor, and the CITY OF LONG BEACH, hereinafter the Subgrantee. The Subgrantee agrees to operate a program in accordance with the provisions of this Subgrant and to have an approved WIA Local Plan for the above named Subgrantor filed with the Subgrantor pursuant to the Workforce Investment Act (WIA). 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
General Provisions and standards of Conduct
Title I-Y (WIA TITLE I YOUTH FORMULA)

Exhibit AA, pages 1 through 1
Exhibit BB, pages 1 through 14
Exhibit DD, pages 1 through 1

APPROVED AS TO FORM

August 4, 2009
ROBERT E. SHANNON, City Attorney
By Gary J. Anderson
GARY J. ANDERSON
DEPUTY CITY ATTORNEY

ALLOCATION(s): The Subgrantor agrees to reimburse the Subgrantee not to exceed the amount listed hereinafter "TOTAL":
PRIOR AMOUNT: \$0.00
INCREASE/DECREASE: \$2,101,679.00
TOTAL: \$2,101,679.00

TERMS OF AGREEMENT: From 04/01/2009 to 06/30/2011
Terms of Exhibits are as designated on each exhibit

PURPOSE: To initiate the PY 2009-10 WIA subgrant and incorporate WIA Youth formula funding under GC 301.

APPROVED FOR SUBGRANTOR (EDD) (By Signature)

April C. Eales

Name and Title
BOB HEIMSMEIER
CHIEF
WORKFORCE SERVICES DIVISION

APPROVED FOR SUBGRANTEE (By Signature)

[Signature] Assistant City Manager

Name and Title
Patrick H. West
City Manager
EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER

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

Gabrielle Long
Signature of EDD Accounting Officer

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]
Signature of EDD Contract Officer

Budget item: 7100 Fund: 0869 Budgetary Attachment: YES
Chapter 268 Statutes: 2008 FY: 08/09

PPS

WIA
SUBGRANT AGREEMENT
FUNDING DETAIL SHEET

Exhibit AA
Page 1 of 1

SUBGRANTEE NAME: CITY OF LONG BEACH

SUBGRANT NO: K074146
MODIFICATION NO: NEW

I. ALLOCATION

FUNDING SOURCE	PRIOR AMOUNT	INCREASE	DECREASE	ADJUSTED ALLOCATION
TITLE I-Y: YOUTH				
9610/10 WIA TITLE I YOUTH FORMULA (301) : 04/01/2009 to 06/30/2011 Prog/Element 61/ 00 Ref 101 Fed Catlg 417259	\$0.00	\$2,101,679.00	\$0.00	\$2,101,679.00
TOTAL TITLE I-Y	\$0.00	\$2,101,679.00	\$0.00	\$2,101,679.00
GRAND TOTAL:	\$0.00	\$2,101,679.00	\$0.00	\$2,101,679.00

All references are to the Workforce Investment Act of 1998, Title I, unless otherwise noted. For modifications purposes only. All other terms and conditions of this exhibit not included herein remain unchanged.

WIA SUBGRANT AGREEMENT

Subgrantee: CITY OF LONG BEACH

Exhibit BB
Page 1 of 14
SUBGRANT NO: K074146
MODIFICATION NO: NEW

1. Compliance

In performance of this subgrant agreement, Subgrantee will fully comply with:

- a). The provisions of the Workforce Investment Act (WIA) and all regulations, legislation, directives, policies, procedures and amendments issued pursuant thereto.
- b). All State legislation and regulations to the extent permitted by federal law and all policies, directives and/or procedures, which implement the WIA.
- c). The provisions of Public Law 107-288, Jobs for Veterans Act, as the law applies to Department of Labor (DOL) job training programs
- d). Subgrantee will ensure diligence in managing programs under this subgrant agreement, including performing appropriate monitoring activities and taking prompt corrective action against known violations of the WIA. Subgrantee agrees to conform to the provisions of the WIA and the contract requirements as referenced in 29 CFR Part 95, Appendix A and 29 CFR, Part 97.36(i)(1-13).

This subgrant agreement contains the entire agreement of the parties and supersedes all negotiations, verbal or otherwise and any other agreement between the parties hereto. This subgrant agreement is not intended to and will not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association between the Subgrantor and the Subgrantee. Subgrantee represents and warrants it is free to enter into and fully perform this subgrant agreement.

2. Certification/Assurances

Except as otherwise indicated, the following certifications apply to all Subgrantee's.

- a). Corporate Registration: The Subgrantee, if it is a corporation, certifies it is registered with the Secretary of State of the State of California.
- b). The Subgrantee agrees to comply with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to ADA. (42 U.S.C.12101 et seq.
- c). Sectarian Activities: The Subgrantee certifies that this subgrant agreement does not provide for the advancement or aid to any religious sect, church or creed, or sectarian purpose nor does it help to support or sustain any school, college, university, hospital or other institution controlled by any religious creed, church, or sectarian denomination whatsoever, as specified by Article XVI, Section 5, of the Constitution, regarding separation of church and state.
- d). National Labor Relations Board: The Subgrantee (if not a public entity), by signing this subgrant agreement, does swear under penalty of perjury, that no more than one final unappeasable finding of contempt of court by a federal court has been issued against the Subgrantee within the immediately preceding two-year period because of Subgrantee's failure to comply with an order of a federal court, which orders the Subgrantee to comply with an order of the National Labor Relations Board (PCC10296).
- e). Prior Findings: Subgrantee, by signing this subgrant agreement, does swear under penalty of perjury, that it has not failed to satisfy any major condition in a current or previous subgrant agreement with the DOL or the State of California and has not failed to satisfy conditions relating to the resolution of a final finding and determination, including repayment of debts.
- f). Drug-Free Workplace Certification: By signing this subgrant agreement the Subgrantee hereby certifies under penalty of perjury under the laws of the State of California that the Subgrantee will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:
 - (1). Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
 - (2). Establish a Drug-Free Awareness Program as required to inform employees about:
 - the dangers of drug abuse in the workplace;
 - the person's or organization's policy of maintaining a drug-free workplace;
 - any available counseling, rehabilitation and employee assistance programs; and,
 - penalties that may be imposed upon employees for drug abuse violations.
 - (3). Every employee who works on this subgrant agreement will:
 - receive a copy of the company's drug-free policy statement; and,
 - agree to abide by the terms of the company's statement as a condition of employment on the subgrant/contract.
- g). Child Support Compliance Act: In accordance with the Child Support Compliance Act, the

Subgrantee recognizes and acknowledges:

- (1). The importance of child and family support obligations and shall fully comply with applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and that to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Employee Registry maintained by the California Employment Development Department (EDD).
- h). Debarment and Suspension Certification: By signing this subgrant agreement, the Subgrantee hereby certifies under penalty of perjury under the laws of the State of California that the Subgrantee will comply with regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98.510, that the prospective participant (i.e., grantee), to the best of its knowledge and belief, that it and its principals:
- (1). Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transitions by any federal department or agency.
 - (2). Have not within a three-year period preceding this subgrant agreement been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property.
 - (3). Are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state or local) with commission of any of the offenses enumerated in Section 2 of this certification.
 - (4). Have not within a three year period preceding this subgrant agreement had one or more public transactions (federal, state or local) terminated for cause of default.

Where the Subgrantee is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this agreement.

- i). Lobbying Restrictions: By signing this subgrant agreement the Subgrantee hereby assures and certifies to the lobbying restrictions which are codified in the DOL regulations at 29 CFR Part 93.
- (1). No federal appropriated funds have been paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this federal contract, grant loan, or cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - (2). If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress, in connection with this subgrant agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
 - (3). The undersigned shall require that the language of the lobbying restrictions be included in the award documents for subgrant agreement transactions over \$100,000 (per OMB) at all tiers (including subgrant agreements, contracts and subcontracts, under grants, loan, or cooperative agreements), and that all subrecipients shall certify and disclose accordingly.
 - (4). This certification is a material representation of fact upon which reliance is placed when this transaction is executed. Submission of the Lobbying Certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, and U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

j). Priority Hiring Considerations:

If this subgrant includes services in excess of \$200,000, the Subgrantee shall give priority consideration in filling vacancies in positions funded by the subgrant to qualified recipients of aid under Welfare and Institutions Section Code 11200 in accordance with Public Contract Code 10353.

k). Sweatfree Code of Conduct:

- 1). All Subgrantees contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other

WIA SUBGRANT AGREEMENT

Subgrantee: CITY OF LONG BEACH

Exhibit BB
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 SUBGRANT NO: K074146
 MODIFICATION NO: NEW

than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The Subgrantee further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.

- 2). The Subgrantee agrees to cooperate fully in providing reasonable access to the subgrantees' records, documents, agents or employees, or premises if reasonably required by authorized officials of the Subgrantor, the Department of Industrial Relations, or the Department of Justice to determine the subgrantees' compliance with the requirements under paragraph a of the Sweatfree Code of Conduct.
- 1). Unenforceable Provision: In the event that any provision of this subgrant agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this subgrant agreement have force and effect and shall not be affected hereby.
- m). Nondiscrimination Clause

- 1). The conduct of the parties to this subgrant agreement will be in accordance with Title VI of the Civil Rights Act of 1964, and the Rules and Regulations promulgated there under and the provisions of WIA, Section 188.

- (a). As a condition to the award of financial assistance from the Department of Labor under Title I of WIA, the grant applicant assures that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

Section 188 of the Workforce Investment Act of 1998 (WIA), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIA Title I - financially assisted program or activity;

Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, and national origin;

Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;

The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and

Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.

The grant applicant also assures that it will comply with 29 CFR part 37 and all other regulations implementing the laws listed above. This assurance applies to the grant applicant's operation of the WIA Title I-financially assisted program or activity, and to all agreements that grant applicant makes to carry out the WIA Title I-financially assisted program or activity. The grant applicant understands that the United States has the right to seek judicial enforcement of this assurance.

- (b). This Subgrantee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the subgrant agreement.

- (c). This Subgrantee agrees to conform to nondiscrimination provisions of the WIA and other federal nondiscrimination requirements referenced in 29 CFR, Part 37.

n). Indemnification:

- 1). The following provision applies only if the Subgrantee is a governmental entity:

Pursuant to the provision of Section 895.4 of the California Government Code, each party agrees to indemnify and hold the other party harmless from all liability for damage to persons or property arising out of or resulting from acts or omissions of the indemnifying party.

- 2). The following provision applies only if the Subgrantee is a non-governmental entity:

The Subgrantee agrees to the extent permitted by law, to indemnify, defend and save harmless the Subgrantor, its officers, agents and employees from any and all claims and

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losses accruing or resulting to any and all contractors, subcontractors, materials persons, laborers and any other persons, firms or corporations, furnishing or supplying work, services, materials, or supplies in connection with the performance of this agreement, and from any and all claims and losses accruing or resulting to any persons, firms or corporations which may be injured or damaged by the Subgrantee in the performance of this subgrant agreement.

Failure to comply with all requirements of the certifications in Section 2 may result in suspension of payment under this subgrant agreement or termination of this subgrant agreement or both, and the Subgrantee may be ineligible for award of future state subgrant agreements/contracts if the department determines that any of the following has occurred: (1) false information on the certifications, or (2) violation of the terms of the certifications by failing to carry out the requirements as noted above.

o). Salary and Bonus Limitations:

In compliance with Public Law 109-234, none of the funds appropriated in Public Law 109-149 or prior Acts under the heading "Employment and Training" that are available for expenditure on or after June 15, 2006, shall be used by a recipient or subrecipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II, except as provided for under section 101 of Public Law 109-149. This limitation shall not apply to vendors providing goods and services as defined in OMB Circular A-133. Where States are recipients of such funds, States may establish a lower limit for salaries and bonuses of those receiving salaries and bonuses from subrecipients of such funds, taking into account factors including the relative cost-of-living in the States, the compensation levels for programs involved including Employment and Training Administration programs. See Training and Employment Guidance Letter number 5-06 for further clarification.

The incurrence of costs and receiving reimbursement for these costs under this award certifies that your organization has read the above special condition and is in compliance.

p). Clean Air and Water Act:

For subgrants in excess of \$100,000, compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857 {h}); Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and the U.S. Environmental Protection Agency regulations (40 CFR 15, revised as of July 1, 1989).

3. Standards of Conduct

The following standards apply to all Subgrantees.

- a). General Assurance: Every reasonable course of action will be taken by the Subgrantee in order to maintain the integrity of this expenditure of public funds and to avoid favoritism and questionable or improper conduct. This subgrant agreement will be administered in an impartial manner, free from efforts to gain personal, financial or political gain. Subgrantee agrees to conform to the nondiscrimination requirements as referenced in WIA, Section 188.
- b). Avoidance of Conflict of Economic Interest: An executive or employee of the Subgrantee, an elected official in the area or a member of the Local Board, will not solicit or accept money or any other consideration from a third person, for the performance of an act reimbursed in whole or part by the Subgrantee or Subgrantor: Supplies, materials, equipment or services purchased with subgrant agreement funds will be used solely for purposes allowed under this subgrant agreement. No member of the Local Board will cast a vote on the provision of services by that member (or any organization, which that member represents) or vote on any matter which would provide direct financial benefit to that member (or immediate family of the member) or any business or organization which the member directly represents.

4. Coordination

Subgrantee will, to the maximum extent feasible, coordinate all programs and activities supported under this part with other programs under the WIA, including the Wagner-Peyser Act, Title 38 of the United States Code, and other employment and training programs at the state and local level.

Subgrantee will consult with the appropriate labor organizations and/or employer representatives in the design, operation or modification of the programs under this subgrant agreement.

5. Subcontracting

- a). Any of the work or services specified in this subgrant agreement which will be performed by other than by the Subgrantee will be evidenced by a written agreement specifying the terms and conditions of such performance.
- b). The Subgrantee will maintain and adhere to an appropriate system, consistent with federal,

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state and local law, for the award and monitoring of contracts which contain acceptable standards for insuring accountability.

- c). The system for awarding contracts will contain safeguards to insure that the Subgrantee does not contract with any entity whose officers have been convicted of fraud or misappropriation of funds within the last two years.

6. Insurance

Except for city and county governmental entities, Subgrantees must provide the Subgrantor evidence of the coverage specified in a, b, c and d below. The evidence of coverage shall include the registration number of the subgrant agreement for identification purposes.

- a). Subgrantee will obtain a fidelity bond in an amount of not less than _____, prior to the receipt of funds under this subgrant agreement. If the bond is canceled or reduced, Subgrantee will immediately so notify the Subgrantor. In the event the bond is canceled or revised, the Subgrantor will make no further disbursements until it is assured that adequate coverage has been obtained.
- b). Subgrantee will provide general liability insurance with a combined limit of \$1,000,000 or public liability and property damage coverage with a combined limit of not less than \$1,000,000.
- c). Subgrantee will provide broad form automobile liability coverage with limits as set forth in (b) above, which applies to both owned/leased and non-owned automobiles used by the Subgrantee or its agents in performance of this subgrant agreement, or, in the event that the Subgrantee will not utilize owned/leased automobiles but intends to require employees, trainees or other agents to utilize their own automobiles in performance of this subgrant agreement, Subgrantee will secure and maintain on file from all such employees, trainees or agents a self-certification of automobile insurance coverage.
- d). Subgrantee will provide Worker's Compensation Insurance, which complies with provisions of the California Labor Code, covering all employees of the Subgrantee and all participants enrolled in work experience programs. Medical and Accident Insurance will be carried for those participants not qualifying as "employee" (Section 3350, et seq. of the California Labor Code) for Worker's Compensation.
- e). The Subgrantor will be named as "Certificate Holder" of policies secured in compliance with paragraphs a-d above and will be provided certificates of insurance or insurance company "binders" prior to any disbursement of funds under this subgrant agreement, verifying the insurance requirements have been complied with. The coverage noted in b and c above must contain the following clauses:
- (1). Insurance coverage will not be canceled or changed unless 30 days prior to the effective date of cancellation or change written notice is sent by the Subgrantee to:

Employment Development Department
WIA - Financial Management Unit
P.O. Box 826880, MIC 69
Sacramento, CA 94280-0001
 - (2). State of California, its officers, agents, employees and servants are included as additional insured, but only insofar as the operations under this subgrant agreement are concerned.
 - (3). The State of California is not responsible for payment of premiums or assessments on this policy

7. Resolution

A county, city, district or other local public body must provide the state with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of this subgrant agreement. Preferably resolutions should authorize a designated position rather than a named individual.

8. Funding

It is mutually understood between the parties that this subgrant agreement may have been written before ascertaining the availability of congressional and legislative appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the subgrant agreement was executed after that determination was made.

This subgrant agreement is valid and enforceable only if (1) sufficient funds are made available by the State Budget Act of the appropriate state fiscal years covered by this subgrant agreement for the purposes of this program and; (2) sufficient funds available to the state by the United States Government for the fiscal years covered by this subgrant agreement for the purposes of this program. In addition, this subgrant agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress and Legislature or any statute enacted by the

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Congress and Legislature which may affect the provisions, terms, or funding of this subgrant agreement in any manner.

- a). At the expiration of the terms of this subgrant agreement or upon termination prior to the expiration of this subgrant agreement, funds not obligated for the purpose of this subgrant agreement will be immediately remitted to the Subgrantor, and no longer available to the Subgrantee.
- b). The Subgrantor retains the right to suspend financial assistance, in whole or in part, to protect the integrity of the funds or to ensure proper operation of the program, providing the Subgrantee is given prompt notice and the opportunity for an informal review of the Subgrantor's decision. The Chief Deputy Director or his designee will perform this informal review and will issue the final administrative decision within 60 days of receiving the written request for review. Failure on the part of the Subgrantee or a Subcontractor of the Subgrantee to comply with the provisions of this subgrant agreement, or with the WIA or regulations, when such failure involves fraud or misappropriation of funds, may result in immediate withholding of funds.
- c). The local Chief Elected Official (CEO) of a unit of general local government designated as a Local Workforce Investment Area (LWIA) shall be liable to the EDD for all funds not expended in accordance with WIA, and shall return to the EDD all of those funds. If there is more than one unit of general local government in a LWIA, the CEO(s) will be the individual(s) designated under an agreement executed by the CEO(s) of the local units of government. The CEO(s) designated under the agreement shall be liable to the EDD for all funds not expended in accordance with the WIA, and shall return to the EDD all of those funds.

9. Accounting and Cash Management

- a). Subgrantee will comply with controls, record keeping and fund accounting procedure requirements of WIA, federal and state regulations and directives to ensure the proper disbursement of, and accounting for, program funds paid to the Subgrantee and disbursed by the Subgrantee, under this subgrant agreement.
- b). Subgrantee will submit requests for cash to coincide with immediate cash needs and assure that no excess cash is on deposit in their accounts or the accounts of any sub-contracting service provider in accordance with procedures established by the Subgrantor. Failure to adhere to these provisions may result in suspending cash draw down privileges and providing funds through a reimbursement process.
- c). The Subgrantor retains the authority to adjust specific amounts of cash requested if the Subgrantor's records and subsequent verification with the Subgrantee indicate that the Subgrantee has an excessive amount of cash in its account.
- d). Income (including interest income) generated as a result of the receipt of WIA activities, will be utilized in accordance with policy and procedures established by the Subgrantor. Subgrantee will account for any such generated income separately.
- e). Subgrantee shall not be required to maintain a separate bank account but shall separately account for WIA funds on deposit. All funding under this subgrant agreement, will be made by check or wire transfer payable to the Subgrantee for deposit in Subgrantee's bank account or city and county governmental bank accounts. To provide for the necessary and proper internal controls, funds should be withdrawn and disbursed by no less than two representatives of the Subgrantee. The Subgrantor will have a lien upon any balance of WIA funds in these accounts, which will take priority over all other liens or claims.

10. Amendments

This subgrant agreement may be unilaterally modified by the Subgrantor under the following circumstances:

- a). There is an increase or decrease in federal or state funding levels.
- b). A modification to the Subgrant is required in order to implement an adjustment to a Subgrantee's plan.
- c). Funds awarded to the Subgrantee have not been expended in accordance with the schedule included in the approved Subgrantee's plan. After consultation with the Subgrantee, the Subgrantor 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 state and federal law, regulations and policies, reverting to the Subgrantor.
- d). There is a change in state and federal law or regulation requiring a change in the provisions of this subgrant agreement.
- e). An amendment is required to change the Subgrantees' name as listed on this subgrant agreement. Upon receipt of legal documentation of the name change the state will process the amendment. Payment of invoices presented with a new name cannot be paid prior to

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approval of said amendment.

Except as provided above, this subgrant agreement may be amended only in writing by the mutual agreement of both parties.

11. Reporting

Subgrantee will compile and submit reports of activities, expenditures, status of cash and closeout information by the specified dates as prescribed by the Subgrantor. All expenditure reports must be submitted upon the accrual basis of accounting. Failure to adhere to the reporting requirements of this agreement will result in funds not being released.

12. Termination

This subgrant agreement may be terminated in whole or in part for either of the two following circumstances:

- a). Termination for Convenience - Either the Subgrantor or the Subgrantee may request a termination, in whole or in part, for convenience. The Subgrantee will give a ninety- (90) calendar-day advance notice in writing to the Subgrantor. The Subgrantor will give a ninety (90) calendar-day advance notice in writing to the Subgrantee.
- b). Termination for Cause - The Subgrantor may terminate this subgrant agreement in whole or in part when it has determined that the Subgrantee has substantially violated a specific provision of the WIA regulations or implementing state legislation and corrective action has not been taken.

- (1). All notices of termination must be in writing and be delivered personally or by deposit in the U. S. Mail, postage prepaid, "Certified Mail-Return Receipt Requested", and will be deemed to have been given at the time of personal delivery or of the date of postmark by the U. S. Postal Service.

Notices to the Subgrantee will be addressed to:

Bryan S. Rogers
WIB Executive Director
3447 Atlantic Ave.
Long Beach, CA 90807

Notices to the Subgrantor will be addressed to:

Employment Development Department
Workforce Services Division
Financial Management Unit
P.O. Box 826880, MIC 69
Sacramento, CA 94280-0001

13. Records

- a). If participants are served under this subgrant agreement, the Subgrantee will establish a participant data system as prescribed by the Subgrantor.
- b). Subgrantee will retain all records pertinent to this subgrant agreement for a period of three years from the date of final payment of this subgrant agreement. If, at the end of three years, there is litigation or an audit involving those records, the Subgrantee will retain the records until the resolution of such litigation or audit. Refer to 29 CFR, Part 97.42(b)(2) or 29 CFR, Part 95.53(b)(1).
- c). The Subgrantor and/or the U. S. DOL, or their designee (refer to 29 CFR, Part 95.48(d) or 29 CFR Part 97.36(i)(10)) will have access to and right to examine, monitor and audit all records, documents, conditions and activities related to programs funded by this subgrant agreement. For purposes of this section, "access to" means that the Subgrantee shall at all times maintain within the State of California a complete set of records and documents related to programs funded by this agreement. The Subgrantee 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 the subgrant. Subgrantee's performance under the terms and conditions herein specified will be subject to an evaluation by the Subgrantor of the adequacy of the services performed, timeliness of response and a general impression of the competency of the firm and its staff.

14. Audits

- a). The Subgrantee will maintain and make available to auditors, at all levels, accounting and program records including supporting source documentation and cooperate with all auditors. All governmental and non-profit organizations must follow the audit requirements of OMB (single audit or program-specific audit requirement) Circular A-133 (29 CFR 97.26 and 29 CFR 95.26).

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- b). The Subgrantee and/or auditors performing monitoring or audits of the Subgrantee or its sub-contracting service providers will immediately report to the Subgrantor any incidents of fraud, abuse or other criminal activity in relation to this subgrant agreement, the WIA, or its regulations.

15. Disallowed Costs

Except to the extent that the state determines it will assume liability, the Subgrantee will be liable for and will repay, to the Subgrantor, any amounts expended under this subgrant agreement found not to be in accordance with WIA including, but not limited to, disallowed costs. Such repayment will be from funds (Non-Federal), other than those received under the WIA.

16. Conflicts

- a). Subgrantee will cooperate in the resolution of any conflict with the U. S. DOL that may occur from the activities funded under this agreement.
- b). In the event of a dispute between the Subgrantor and the Subgrantee over any part of this subgrant agreement, the dispute may be submitted to non-binding arbitration upon the consent of both the Subgrantor and the Subgrantee. An election for arbitration pursuant to this provision will not preclude either party from pursuing any remedy for relief otherwise available.

17. Grievances and Complaint System

Subgrantee will establish and maintain a grievance and complaint procedure in compliance with the WIA, federal regulations and state statues, regulations and policy.

18. Property

All property, whether finished or unfinished documents, data, studies and reports prepared or purchased by the Subgrantee under this subgrant agreement, will be disposed of in accordance with the direction of the Subgrantor. In addition, any tools and/or equipment furnished to the Subgrantee by the Subgrantor and/or purchased by the Subgrantee with funds pursuant to this subgrant agreement will be limited to use within the activities outlined in this subgrant agreement and will remain the property of the United States Government and/or the Subgrantor. Upon termination of this subgrant agreement, Subgrantee will immediately return such tools and/or equipment to the Subgrantor or dispose of them in accordance with the direction of the Subgrantor.

19. Intellectual Property Provisions

a). Federal Funding

In any subgrant funded in whole or in part by the federal government, Subgrantor may acquire and maintain the Intellectual Property rights, title, and ownership, which result directly or indirectly from the subgrant, except as provided in 37 Code of Federal Regulations 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.

b). Ownership

- (1). Except where Subgrantor has agreed in a signed writing to accept a license, Subgrantor 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 Subgrantee or Subgrantor and which result directly or indirectly from this subgrant agreement.
- (2). For the purposes of this subgrant 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 Subgrantor, 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 purposes of the definition of Intellectual Property, "works" means all literary works, writings and printed matter including the medium by which they

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

- (3). In the performance of this subgrant agreement, Subgrantee may exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this subgrant agreement. In addition, under this subgrant agreement, Subgrantee may access and utilize certain of Subgrantor's intellectual property in existence prior to the effective date of this subgrant agreement. Except as otherwise set forth herein, Subgrantee shall not use any of Subgrantor's Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of Subgrantor. Except as otherwise set forth herein, neither the Subgrantee nor Subgrantor shall give any ownership interest in or rights to its Intellectual Property to the other Party. If, during the term of this subgrant agreement, Subgrantee accesses any third-party Intellectual Property that is licensed to Subgrantor, Subgrantee agrees to abide by all license and confidentiality restrictions applicable to Subgrantor in the third-party's license agreement.
- (4). Subgrantee agrees to cooperate with Subgrantor in establishing or maintaining Subgrantor's exclusive rights in the Intellectual Property, and in assuring Subgrantor's sole rights against third parties with respect to the Intellectual Property. If the Subgrantee enters into any agreements or subcontracts with other parties in order to perform this subgrant agreement, Subgrantee shall require the terms of the agreement(s) to include all Intellectual Property provisions of paragraph nineteen a) through nineteen i). Such terms must include, but are not limited to, the subcontractor assigning and agreeing to assign to Subgrantor all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, subgrantee or subgrantor and which result directly or indirectly from this subgrant agreement or any subcontract.
- (5). Pursuant to paragraph nineteen (b) (4) of the Intellectual Property Provisions in Exhibit BB to this subgrant agreement, the requirement for the Subgrantee to include all Intellectual Property Provisions of paragraph nineteen a) through nineteen i) of the Intellectual Property Provisions in all agreements and subcontracts it enters into with other parties does not apply to subgrant agreements or subcontracts that are for customized and on-the-job training as authorized under 20 CFR 663.700-730.
- (6). Subgrantee further agrees to assist and cooperate with Subgrantor 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 Subgrantor'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 Subgrantee or Subgrantor and which result directly or indirectly from this subgrant agreement, Subgrantee 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 subgrant agreement. Subgrantee hereby grants to Subgrantor, 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 Subgrantee'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 subgrant, unless Subgrantee 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 Subgrantee from using any ideas, concepts, know-how, methodology or techniques related to its performance under this subgrant agreement, provided that Subgrantee's use does not infringe the patent, copyright, trademark rights, license or other Intellectual Property rights of Subgrantor or third party, or result in a breach or default of any provisions of paragraph nineteen a) through nineteen i) or result in a breach of any provisions of law relating to confidentiality.

d). Copyright

- (1) Subgrantee agrees that for purposes of copyright law, all works (as defined in Ownership, paragraph nineteen (b) (2) (a) of authorship made by or on behalf of

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Subgrantee in connection with Subgrantee's performance of this subgrant agreement shall be deemed "works made for hire." Subgrantee further agrees that the work of each person utilized by Subgrantee in connection with the performance of this subgrant agreement will be a "work made for hire," whether that person is an employee of Subgrantee or that person has entered into an agreement with Subgrantee to perform the work. Subgrantee shall enter into a written agreement with any such person that: (i) all work performed for Subgrantee shall be deemed a "work made for hire" under the Copyright Act and (ii) that person shall assign all right, title, and interest to Subgrantor to any work product made, conceived, derived from or reduced to practice by Subgrantee or Subgrantor and which result directly or indirectly from this subgrant agreement. Refer to 29 CFR, Part 95, Appendix A 5 or Part 97.34.

- (2) All materials, including, but not limited to, computer software, visual works or text, reproduced or distributed pursuant to this subgrant agreement that include Intellectual Property made, conceived, derived from, or reduced to practice by Subgrantee or Subgrantor and which result directly or indirectly from this subgrant agreement may not be reproduced or disseminated without prior written permission from Subgrantor.

e). Patent Rights

With respect to inventions (refer to 29 CFR, 97.36(i)(8)) made by Subgrantee in the performance of this subgrant agreement, which did not result from research and development specifically included in the Subgrant's scope of work, Subgrantee hereby grants to Subgrantor a license as described under paragraph nineteen c) for devices or material incorporating, or made through the use of such inventions. If such inventions result from research and development work specifically included within the subgrant agreement's scope of work, then Subgrantee agrees to assign to Subgrantor, without additional compensation, all its right, title and interest in and to such inventions and to assist Subgrantor in securing United States and foreign patents with respect thereto.

f). Third-Party Intellectual Property

Except as provided herein, Subgrantee agrees that its performance of this subgrant agreement shall not be dependent upon or include any Intellectual Property of Subgrantee or third party without first: (i) obtaining Subgrantor's prior written approval; and (ii) granting to or obtaining for Subgrantor's, without additional compensation, a license, as described in paragraph nineteen c), for any of Subgrantee's or third-party's Intellectual Property in existence prior to the effective date of this subgrant agreement. If such a license upon these terms is unattainable, and Subgrantor determines that the Intellectual Property should be included in or is required for Subgrantee's performance of this subgrant agreement, Subgrantee shall obtain a license under terms acceptable to Subgrantor.

g). Warranties

(1). Subgrantee represents and warrants that:

- (a). It has secured and will secure all rights and licenses necessary for its performance of this subgrant agreement.
- (b). Neither Subgrantee's performance of this subgrant agreement, nor the exercise by either Party of the rights granted in this subgrant 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 Subgrantee or Subgrantor and which result directly or indirectly from this subgrant 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 Subgrantee.
- (c). Neither Subgrantee'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). Of music or performances used, and talent (radio, television and motion picture talent), owners of any interest in and to real estate, sites locations, property or props that may be used or shown.
- (f). 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 Subgrantor in this subgrant agreement.

(g). It has appropriate systems and controls in place to ensure that state and federal funds will not be used in the performance of this subgrant agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

(h). 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 Subgrantee's performance of this subgrant agreement.

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

h). Intellectual Property Indemnity

(1). Subgrantee shall indemnify, defend and hold harmless Subgrantor 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 Subgrantee 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 Subgrantee pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of Subgrantor'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 Subgrantee or Subgrantor and which result directly or indirectly from this subgrant 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 subgrant agreement. Subgrantor reserves the right to participate in and/or control, at Subgrantee's expense, any such infringement action brought against Subgrantor.

(2). Should any Intellectual Property licensed by the Subgrantee to Subgrantor under this subgrant agreement become the subject of an Intellectual Property infringement claim, Subgrantee will exercise its authority reasonably and in good faith to preserve Subgrantor's right to use the licensed Intellectual Property in accordance with this subgrant agreement at no expense to Subgrantor. Subgrantor shall have the right to monitor and appear through its own counsel (at Subgrantee's expense) in any such claim or action. In the defense or settlement of the claim, Subgrantee may obtain the right for Subgrantor 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, Subgrantor may be entitled to a refund of all monies paid under this subgrant agreement, without restriction or limitation of any other rights and remedies available at law or in equity.

(3). Subgrantee agrees that damages alone would be inadequate to compensate Subgrantor for breach of any term of these Intellectual Property provisions of paragraph nineteen a) through nineteen i) by Subgrantee. Subgrantee acknowledges Subgrantor would suffer irreparable harm in the event of such breach and agrees Subgrantor 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 subgrant agreement or any project schedule.

20. Confidentiality Requirements

The State of California and the Subgrantee will exchange various kinds of information pursuant to this subgrant agreement. That information will include data, applications, program files, and information about specific clients receiving services. 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, the California Department of Social Services, the California Department of Education, the California Department of Corrections, the County Welfare Department(s), the County IV-D Directors Office of Child Support, the Office of the District Attorney, the California Department of Mental Health, the California Office of Community Colleges, the Department of Alcohol and Drug Programs, and individuals requesting program services.

The Subgrantor and Subgrantee agree that:

- a). Each party shall keep all confidential information that is exchanged between them in the strictest confidence and make such information available to their own employees only on a "need-to-know" basis.
- b). Each party shall provide security sufficient to ensure 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.
- c). The Subgrantee agrees that information obtained under this subgrant agreement will not be reproduced, published, sold or released in original or in any other form for any purpose other than those specifically identified in this agreement.
 - i. Aggregate Summaries: All reports and/or publications developed by the Subgrantee based on data obtained under this agreement shall contain confidential data in aggregated or statistical summary form only. "Aggregated" refers to a data output that does not allow identification of an individual or employer unit.
 - ii. Publication: Prior to publication, Subgrantee shall carefully analyze aggregated data outputs to ensure the identity of individuals and/or employer units cannot be inferred pursuant to Unemployment Insurance Code section 1094(c). Personal identifiers must be removed. Geographic identifiers should be specified only in large areas and as needed, and variables should be recorded in order to protect confidentiality.
 - iii. Minimum Data Cell Size: The minimum data cell size or derivation thereof shall be three participants for any data table released to outside parties or to the public.
- d). Each party agrees that no disaggregate data, identifying individuals or employers, shall be released to outside parties or to the public.
- e). The Subgrantee shall notify Subgrantor's Information Security Office of any actual or attempted information security incidents, within 24 hours of initial detection, by telephone at (916) 654-6231. Information Security Incidents include, but are not limited to, any event (intentional or unintentional), that causes the loss, damage, or destruction, or unauthorized access, use, modification, or disclosure of information assets.

The Subgrantee shall cooperate with the Subgrantor in any investigations of security incidents. The system or device affected by an information security incident and containing confidential data obtained in the administration of this program shall be immediately removed from operation upon confidential data exposure or a known security breach. It shall remain removed from operation until correction and mitigation measures are applied.

If the Subgrantee learns of a breach in the security of the system which contains confidential data obtained under this Subgrant, then the Subgrantee must provide notification to individuals pursuant to Civil Code section 1798.82.
- f). The Subgrantee shall provide for the management and control of physical access to information assets (including personal computer systems, computer terminals, mobile computing devices, and various electronic storage media) used in performance of this Subgrant. This shall include, but is not limited to, security measures to physically protect data, systems, and workstations from unauthorized access and malicious activity; the prevention, detection, and suppression of fires; and the prevention, detection, and minimization of water damage.
- g). At no time will confidential data obtained pursuant to this agreement be placed on a mobile computing device, or on any form of removable electronic storage media of any kind unless the data are fully encrypted.
- h). Each party shall provide its employees with access to confidential information with written instructions fully disclosing and explaining the penalties for unauthorized use or disclosure of confidential information found in section 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.
- i). Each party 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.
- j). Each party shall promptly return to the other party confidential information when its use ends, or destroy the confidential information utilizing an approved method of destroying

WIA SUBGRANT AGREEMENT

Subgrantee: CITY OF LONG BEACH

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confidential information: shredding, burning, or certified or witnessed destruction. Magnetic media are to be degaussed or returned to the other party.

- k). If the Subgrantor or Subgrantee enters into an agreement with a third party to provide WIA services, the Subgrantor or Subgrantee 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.
- l). The Subgrantee may, in its operation of the One-Stops, permit a One-Stop Operator to enter into a subcontract to manage confidential information. This subcontract may allow an individual to register for resume-distribution services at the same time the individual enrolls in CalJOBS. Subgrantee shall ensure that all such subcontracts comply with the intellectual property requirements of paragraph 19 of this Subgrant, the confidentiality requirements of paragraph 20 of this Subgrant and any other terms of this Subgrant that may be applicable. In addition, the following requirements must be included in the subcontracts:
- (1) All client information submitted over the Internet to the subcontractor's databases must be protected, at a minimum, by 128-bit Secure Socket Layer (SSL) encryption. Clients' social security numbers must be stored in a separate database within the subcontractor's network of servers, and protected by a firewall and a secondary database server firewall or AES data encryption. If a subcontractor receives client social security numbers or other confidential information in the course of business, for example a resume-distribution service that provides enrollment in CalJOBS, social security numbers must be destroyed within two days after the client registers for CalJOBS. If a subcontractor obtains confidential information as an agent of the subgrantee, the subcontract must specifically state the purpose for the data collection and the term of records retention must be stated, and directly related, to the purpose and use of the information. In accordance with 29 Code of Federal Regulations 97.42, social security numbers and other client specific information shall not be retained for more than three years after a client completes services. The subgrantee should extend this period, only if any litigation, claim, negotiation, audit, or other action involving the records has been started before the end of the three-year retention period. In this case the records should be maintained until completion of the action and resolution of all issues arising from it, or until the close of the three-year retention period, whichever is later. (29 CFR sec. 97.42 (b)(2).)
 - (2) Client information (personal information that identifies a client such as name and social security number) and/or demographic information of a client (such as wage history, address, and previous employment) shall not be used as a basis for commercial solicitation during the time the client or agency is using the subcontractor's services. Client information and/or demographic information shall not be used for any purposes other than those specific program purposes set forth in the subcontract.
 - (3) A One-Stop client must still be given the option to use the One-Stop's services, including CalJOBS, even if he or she chooses not to use any services of the subcontractor. This option shall be prominently, clearly, and immediately communicated to the client upon registration within the One-Stop or for CalJOBS, the subcontractor's resume-distribution services, or any other services subcontractor offers to the client or the One-Stop Operator.
 - (4) The subcontractor must clearly disclose all of its potential and intended uses of the client's personal and/or demographic information for the services the clients seeks and for any other services the subcontractor offers. The subcontractor shall not use a client's personal and/or demographic information without the client's prior permission. A link to the subcontractor's Privacy Policy shall appear prominently on the registration screens that list the potential and intended uses of the client's personal and/or demographic information.
 - (5) When the Subgrantor modifies State automated systems such as the State CalJOBS System, it shall provide reasonable notice of such changes to the Subgrantee. The Subgrantee shall be responsible to communicate such changes to the One-Stop Operator(s) in the local area.
- m). Each party shall designate an employee who shall be responsible for overall security and confidentiality of its data and information systems and each party shall notify the other of any changes in that designation. As of this date, the following are those individuals:

FOR THE SUBGRANTOR

Name: Elizabeth J. Clingman
Title: Section Manager
Address: P.O. Box 826880, MIC 69
Sacramento, CA 94280-0001
Telephone: (916) 654-9699

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Fax: (916) 654-9586

FOR THE SUBGRANTEE

Name: Bryan S. Rogers
Title: WIB Executive Director
Telephone: 562.570.3701
Fax: 562.570.3704

21. Signatures

This subgrant agreement is of no force and effect until signed by both of the parties hereto.
Subgrantee will not commence performance prior to the beginning of this subgrant agreement.

Revised October 2007

SUBGRANT NO: K074146
MODIFICATION NO: 00

EXHIBIT DD
Page 1 OF 1

SUBGRANTEE: CITY OF LONG BEACH
FUNDING SOURCE: WIA TITLE I YOUTH FORMULA 301

TERM OF THESE FUNDS: 04/01/2009 TO: 06/30/2011

| 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

The purpose of this action is to initiate this Local Workforce Investment Area's (LWIA) new Program Year (PY) 2009-10 Workforce Investment Act (WIA) Title I subgrant agreement and to incorporate WIA Youth formula funding into Grant Code (GC) 301. The amount in GC 301 represents this LWIA's entire Youth formula allocation for PY 2009-10. The term dates for these funds is April 1, 2009 to June 30, 2011.

The LWIA will operate the WIA program in accordance with the approved Workforce Investment Plan on file in the Workforce Services Division of the Employment Development Department, P.O. Box 826880, MIC 50, Sacramento, CA 92480-0001.

| 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.

WIA (3/2000)

EXHIBIT B
Scope of Work

Name: **City of Long Beach**
Pacific Gateway Workforce Investment Network

Address: 3447 Atlantic Avenue
Long Beach, CA 90807

Contact Person: JP Elma, Community Development Specialist
Phone: (562) 570-4720
Fax: (562) 570-3657
E-mail: joelma@longbeach.gov

Agreement with...

Training School: New Horizons CLC of So. Cal

Address: 1900 S. State College Blvd #100
Anaheim, CA 92806

Contact Person: Lisa Ingroff
Phone: 714.221.3115

Email: lingroff@nhsocal.com

This Agreement sets forth the roles and responsibilities of the parties named above in providing training to Customers served by the City of Long Beach Pacific Gateway Workforce Investment Network.

562.570.WORK • 800.292.7200 • FAX 562.570.3704
3447 Atlantic Avenue, Long Beach, CA 90807 • pacificgatewayworkforce.com

ADMINISTERED BY



Equal Opportunity Employer/Program. Auxiliary aids and services available upon request to individuals with disabilities.
To request a reasonable accommodation, please call 562.570.3738 or TTY 562.570.4629, at least 72 hours prior to event.

- A. **PARTIES:** The City of Long Beach Pacific Gateway Workforce Investment Network (Network), as a designated local workforce investment area, agrees to pay the cost of tuition, books, supplies and/or other eligible agreed upon services required to provide training to eligible Trainees enrolled with the trainer identified on page 1, hereinafter, known as the **Training Vendor**.
- B. **TIME FRAME OF PERFORMANCE:** The time period of this Agreement shall begin upon execution and continue until modified or terminated.
- C. **APPROVED PROGRAMS:** Training programs approved under this agreement, along with tuition and fees, estimated length of training, and program requirements, are listed in the State of California Eligible Training Provider List (ETPL). If the cost of training specified in ETPL is less than the amount listed in the Training Vendor catalog, the ETPL will prevail. Any changes in program costs approved under this agreement or program information, or requests for additional programs, require prior approval by Bureau or other sponsoring Local Workforce Investment Areas.
- D. **CUSTOMER REFERRAL AND RECRUITMENT:** The Training Vendor understands that only trainees referred by the Network may be enrolled into approved training under this Agreement. The Bureau will forward an *Individual Training Account (ITA) Scholarship*, (see Exhibit A for sample), to Provider for each and all authorized Trainees.
4. **COST:**
- a. The total amount reimbursed to the Training Vendor, shall not exceed the amount as documented in the ETPL.
 - b. In no event shall the Network reimburse the Vendor in excess of actual expenditures for those services set forth herein. If training is not completed, the Training Vendor is entitled to that portion of the total reimbursable amount set forth in this Agreement, based on the total number of hours training was actually provided in accordance to California Education Code Section 94318.5 (a) and the Maxine Waters School Reform and Student Protection Act Section 94870.
 - c. Reimbursement to the Training Vendor will be based on the provision of stated training services (as specified in the *ITA Scholarship -Exhibit A*), and the provision of Trainee evaluations. If specified training services are not adequately provided and/or if Trainee evaluations are not provided per the stipulations in this Agreement, payment to the Training Vendor by the Network may be delayed or withdrawn.
 - d. The Training Vendor agrees that the Trainee will not be asked to pay for any items or services provided under this Agreement unless an amount is specified as a "Total Trainee Obligation" in the *ITA Scholarship – Exhibit A*. The Provider understands that a violation of this provision may result in termination of this Agreement, at Network's discretion.
 - e. The Training Vendor agrees to seek and utilize other types of financial aid (i.e. Pell Grants) if applicable/available prior to use of Workforce Investment Act (WIA) funds. If applicable, the Training Vendor must provide the Network with written information concerning financial aid received by each trainee under this agreement within thirty days of receipt or by the "Completion" payment point specified in Item 9, below, whichever comes first. Acceptable documentation, to be submitted to the Network Employment Specialist, shall include a notice of award or denial for financial aid issued by the Training Vendor as a PELL/Other grant entity or completion of the *Financial Aid Eligibility Verification Form* (see Exhibit D). If acceptable documentation is not submitted within the timeframe specified, payment to the Training Vendor by the Network may be delayed or withdrawn. Upon receipt of a notice of award, a revised *ITA Scholarship* will be issued and specify an amended "Total Obligation (City of Long Beach)" and the amount of "Other Education Related Costs" to be disbursed by the Training Vendor to the Trainee, if applicable.

- f. The Training Vendor agrees to maintain records (including books, papers and computer data, time sheets, attendance and payroll records, and cancelled checks) to document all costs, direct and indirect, incurred under this Agreement and to account for all money received under this Agreement. All records shall be kept for a period of five (5) years from the date final payment is made on this Agreement. All records regarding the Trainee shall be made available to the State, Department of Labor, Comptroller General of the United States, Network or any of their duly authorized representatives. The right to the records includes the right to make excerpts, transcripts, and photocopies. The Training Vendor also agrees to provide photocopies of above referenced records, upon request from the Bureau. The Training Vendor agrees to provide reasonable and timely access to personnel for the purpose of interviews and discussions related to the records of the Trainee.
- g. This Agreement is subject to WIA rules and regulations and the availability of WIA funding. Modifications to this Agreement may be made to reflect any reduction in fund availability and subsequent additions and/or changes to WIA rules and regulations. This Agreement shall also be governed by all other applicable laws of the State of California.

6. PERFORMANCE:

- a. The Network retains the right to observe and monitor services provided pursuant to this Agreement, including, but not limited to, quality of training, instructor qualifications and performance, and conduct interviews of Trainee(s) and personnel. If any of these criteria for service performance are not met, payment to the Training Vendor may be delayed or withdrawn.
- b. The Training Vendor agrees to provide daily attendance reports and progress reports on a regular basis (one every month, unless otherwise agreed upon) and any other pertinent student evaluation information per this Agreement. If appropriate Trainee evaluation information is not provided, payment to the Provider may be delayed or withdrawn.
- c. The Training Vendor shall act in an independent capacity and not as officer, employee, or agent of the Network in the performance of this Agreement. This provision shall also apply to any agent or employee of the Training Vendor. The Training Vendor shall not contract or incur expenses in the name of the Network.
- d. The Training Vendor agrees, to the extent permitted by law, to defend, protect, indemnify and hold the Network, its officers, employees, and agents, free and harmless from and against any and all claims damages, expenses, loss or liability of any kind or nature whatsoever growing out of, or resulting from the alleged acts or omissions of Provider, its officers, agents or employees in the performance of this Agreement. Training Vendor shall at its own cost, expense and risk, defend all claims or legal actions that may be instituted against either the Training Vendor or the Network, and shall pay any settlement entered into or satisfy any judgment that may be rendered against either the Training Vendor or the Network.
- e. The Training Vendor shall provide sufficient instruction materials pursuant to a planned curriculum appropriate to the Trainee's educational program and establish sufficient attendance, progress, and performance standards to reasonably ensure that Trainees acquire the necessary level of education, training, skill, and experience to obtain employment in the occupation or job title to which the course of instruction is intended to lead. The Training Vendor agrees to comply with the Maxine Waters School Reform and Student Protection Act Section 94875 (a)(b).
- f. The Training Vendor shall personally perform all services herein and documented in the ETPL. Any attempt by the Training Vendor to delegate or subcontract its duties under this Agreement shall be void and allow the Network to immediately terminate this Agreement and withdraw payment(s).

7. PROVIDER ASSURANCES:

- a. The Training Vendor shall maintain the confidentiality of any information regarding Trainee, or their immediate family, which may be obtained through documents obtained from public agencies, counselors, or any other source. Without permission of the Network, such information shall be divulged only as necessary for the performance or evaluation of the Agreement and only to persons having responsibilities under this Agreement.
- b. The Training Vendor shall ensure that Trainee is provided with Provider's grievance procedures.
- c. If Trainee chooses to drop out of the training program, the Provider shall conduct an exit interview with the Trainee, if possible, to document reason for termination. The Training Vendor shall notify the Bureau in writing within two (2) business days of learning of the Trainee's decision.
- d. The Training Vendor may terminate/suspend Trainee on the same basis Training Vendor would terminate/suspend any other participant receiving educational services. The Training Vendor shall first advise the Network in writing, within five (5) business days, of the impending termination/suspension. The Training Vendor shall provide the Network an opportunity to correct the reason for termination/suspension within an agreed upon time frame. Upon termination/suspension, the Training Vendor shall conduct an exit interview with the Trainee to document reason for termination/suspension.
- e. The Training Vendor shall provide the Trainee with two cancellation forms prior to or at the first class meeting attended by the Trainee in accordance with California Education Code Section 94317.5 (a) and the Maxine Waters School Reform and Student Protection Act of 1989 Section 94868.
- f. The Training Vendor shall maintain appropriate standards for health and safety. Shall ensure that the conditions of training are appropriate and reasonable with regards to the type of training, the geographical region and the proficiency of the Trainee.
- g. The Training Vendor shall, at all times, be in compliance with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA). Compliance with the ADA shall be the sole responsibility of Training Vendor and Training Vendor shall defend and hold the Network harmless from any expense or liability arising from Training Vendor's non-compliance therewith.
- h. The Training Vendor shall comply fully with applicable Federal, State, and local nondiscrimination and equal opportunity provisions, including:
 - That which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIA Title I-financially assisted program or activity
 - Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the bases of race, color and national origin
 - Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities

- The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age, and
 - Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.
- i. The Training Vendor shall ensure compliance with the Network policy that prohibits retaliation or reprisal against an individual that:
 - Has filed a complaint;
 - Opposed a practice prohibited by the nondiscrimination and EO provision of WIA;
 - Furnished information to, or assisted or participated in any manner in, an investigation, review hearing or any other activity related to the administration of the WIA nondiscrimination and EO provisions; and
 - Otherwise exercised any rights and privileges under the WIA nondiscrimination and EO provisions.
 - j. The Training shall permit access by the Network or designated agency to records of employment, employment advertisements, application forms and other pertinent data and records, for the purposes of investigation to ascertain compliance with the fair employment practices provisions of this contract.
 - k. The Training Vendor agrees to maintain records that are sufficient to support all data submitted for the ETPL and will make these records available for monitoring or audit by either the *Network* or the State.
 - l. The Training Vendor shall ensure compliance with applicable Federal, State, and/or local regulations with matters relating to providing a drug-free workplace.
 - m. The Training Vendor shall ensure that training involving sectarian or political activities is prohibited.

8. TERMS

- a. The Agreement is of no force and effect until approved and signed by representatives of both parties hereto. There are no oral understandings or agreements not incorporated herein. The Training Vendor may not commence training until such approval has been obtained.
- b. The Agreement may be terminated by either party upon ten (business) days written notice to the other.

9. INVOICING

- a. The Network shall reimburse the Training Vendor as per stipulations set forth in this Agreement.
- b. The Training Vendor shall submit invoices for payment in accordance with the payment schedule explained below. Invoices must include the following: a) name of Trainee, b) name of training program, c) Employment Specialist name, d) amount due, e) payments made to date, f) balance, g) a Provider billing contact name, h) Federal Tax Identification Number and i) specify Pay Point, e.g., 1 or 2, see below.
- c. Original invoices must be mailed for verification and review to: Career Transition Center, 3447 Atlantic Avenue, Long Beach, CA 90807, Attn: WIA Program Supervisor. **Please address all inquires regarding the status of pending invoices to the Network's WIA Program Supervisor, at (562) 570-3748.**

d. Payment for training shall be disbursed as follows:

Pay Point #1 At the beginning of training (following completion of 100 hours of training)	40%
Pay Point #2 At the completion of training	<u>60%</u>
	100%

Pay Points:

1. **At the Beginning of Training:** This pay point will have been earned and may be billed for by the Training Vendor when: all forms and agreements have been signed and participant is enrolled and started training classes. All invoices related to this pay point shall be submitted to the Network's WIA Program Supervisor no later than fifteen (15) (calendar) days from completing 100 hours of instruction.
2. **At Completion:** This pay point will have been earned and may be billed for by the Training Vendor when: a) the Trainee has satisfactorily completed the training program and has attained competencies as outlined in the Training Vendor's course curriculum and training schedule, and has attained the test score(s) or achievement level prescribed for completion, b) the Provider has submitted to the Network Employment Specialist, daily attendance records, progress reports, test scores (if applicable), a copy of a certificate(s) of completion, and the notice of award or denial for financial aid or the Financial Aid Eligibility Verification Form (Exhibit D) if not already submitted (if applicable). All invoices related to this pay point shall be submitted to the Network's WIA Program Supervisor no later than fifteen (15) calendar days from the completed benchmark.

10. STUDENT EVALUATIONS (PROGRESS REPORTS):

Network standardized Progress Reports, or Training Provider's Progress Reports with a minimum of information identified below shall be provided by the Provider at a minimum of one every month for the duration of training, at the completion of each module (as outlined in the training schedule) and at completion of training.

Minimum Progress Report Requirements:

Training Vendor Name
Vendor Address & Phone no.
Training Program
Trainee Name
Employment Specialist Name
Trainee Signature & Date

Instructor Name
Evaluation Period
Attendance
Training Performance (i.e., progress)\
Comments
Instructor Signature & Date

This Agreement has been executed, by and on behalf of the parties referenced below:

NEW HORIZONS CLC OF SO CAL

Training Vendor Name

Kevin M. Landry

Authorized Signature

Kevin M. Landry, President/CEO/Owner
Name/Title

[REDACTED]
Federal Tax Identification Number

Date

3/15/09

City of Long Beach Workforce Development Bureau

Bryan S. Rogers
Authorized Representative Signature

Bryan S. Rogers, Workforce Development Manager
Name/Title

Date