

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

CONTRACT

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3 THIS CONTRACT ("Contract") is entered into, in duplicate, effective as of
4 November 16, 2015, for reference purposes only, pursuant to a minute order adopted by
5 the City Council of the City of Long Beach at its meeting held on November 10, 2015, by
6 and between LEADERSHIP LONG BEACH INC., a California corporation with offices
7 located at 743 Atlantic Avenue, Long Beach, California 90813 ("Contractor") and the CITY
8 OF LONG BEACH, a municipal corporation ("City") and administering entity for Pacific
9 Gateway Workforce Investment Network.

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

18 WHEREAS, the Application was approved by the State and a Workforce
19 Investment Act/Workforce Innovation and Opportunity Act subgrant has been executed by
20 and between the State and the City authorizing such programs and providing the funding
21 therefore under Workforce Investment Act/Workforce Innovation and Opportunity Act
22 Master Subgrant Agreement which has been designated as K698367 CFDA No. 17.261
23 the ("Prime Contract"); and

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

27 WHEREAS, City is willing to utilize Contractor to provide leadership
28 development and mentoring services to youth program participants;

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

3 1. DOCUMENT INCORPORATION.

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

6 i. The Prime Contract, Exhibit "A", and any extension or
7 continuation thereof or any grant agreement which is the successor thereto
8 which authorizes a training and employment program for the economically
9 disadvantaged, unemployed and underemployed persons, and the
10 documents incorporated therein and attachments thereto, including the
11 assurances and certifications made by the State to the City.

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

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

19 C. Contractor hereby agrees to assume full responsibility for the
20 performance of the operation, coordination and administration of such program
21 pursuant to all the terms and conditions of the Exhibits, to the extent that said
22 documents are applicable to the delivery of services by Contractor hereunder; and
23 the parties hereto agree to perform all duties, obligations and tasks to be performed
24 by each party under the Contract Documents.

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

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

3 2. TERM.

4 A. The term of this Contract ("Term") shall be deemed to have
5 commenced as of July 1, 2015, and unless sooner terminated pursuant to the
6 provisions hereof, shall terminate on March 31, 2017. Either of the parties hereto
7 shall have the right to terminate this Contract in its entirety at any time during the
8 Term for any or no reason whatsoever by giving fifteen (15) days prior written notice
9 of termination to the other party. City shall have the additional right to cancel any
10 part of this Contract at any time during the Term for any reason whatsoever by giving
11 fifteen (15) days' notice of such cancellation to the Contractor.

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

21 3. AWARD UNDER SPECIAL CONDITIONS. The City may award a
22 contract under special conditions if it determines the Contractor as "high risk" under the
23 following categories:

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

1 high risk condition and shall be included in the award.

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

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

15 4. PERFORMANCE REVIEW.

16 A. After each quarter during the Term, the City will conduct a
17 review of Contractor's performance by comparing the Contractor's planned
18 performance and/or contract earning levels with the actual performance and
19 contract earning levels achieved by Contractor. If the Contractor is ten percent
20 (10%) or more below their planned total at the end of the first quarter or any quarter
21 thereafter, the City has the right to unilaterally cancel the contract or de-obligate
22 funds up to the amount of the under expenditure or underperformance.
23 Alternatively, upon review and approval of the City, Contractor may be allowed to
24 submit a corrective action plan demonstrating that program performance is
25 attainable and expenditure levels can be met. At the discretion of the City,
26 Contractor may be allowed to continue program services.

27 B. Underperformance at the end of the second quarter or any
28 quarter thereafter, shall permit the City to unilaterally cancel this Contract or, in the

1 alternative and at the sole discretion of the City, deobligate funds from this Contract
2 up to the amount of the underexpenditures.

3 5. CONTRACT AMOUNT AND PAYMENT.

4 A. The total amount which shall be payable by City to Contractor
5 for Contractor's allowable services during the Term shall not exceed Two Hundred
6 Twenty Thousand Dollars (\$220,000).

7 B. The City shall, in due course, reimburse the Contractor for the
8 actual, allowable, reasonable and necessary costs and expenses incurred by
9 Contractor in the performance of this Contract and are in accordance with and
10 pursuant to the Prime Contract, to the extent that such Prime Contract is applicable
11 to the Contractor's performance hereunder.

12 C. Payment to the Contractor shall be limited to the amounts
13 specified in Exhibit "B" for the categories, criteria and rates established in said
14 Attachment. The allocation of the total contract amount among the items in the
15 Budget may vary by as much as ten percent (10%) without the approval by
16 Workforce Investment Board's Executive Director ("Executive Director").
17 Additionally, Contractor may, with the prior written approval of the Executive Director
18 or his designee, make adjustments within and among the categories of expenditures
19 in the Budget in excess of ten percent (10%), and modify the performance to be
20 rendered hereunder as provided in Exhibit "B"; provided, however, that any such
21 adjustment in expenditures shall not result in an increase in the amount of the total
22 contract. The agent or representative of Contractor who signs as the maker of
23 checks or drafts or in any manner authorizes the disbursement of said funds or
24 expenditure of same shall be covered by a blanket fidelity or comprehensive crime
25 bond regarding the handling of said funds in an amount set out in Section 13,
26 paragraph E of this Contract.

27 D. Contractor shall not charge nor receive compensation under
28 this Contract for any services or expenses unless said services or expenses are

1 directly and exclusively related to the purposes of this Contract, and provided that
2 payment is not also received by Contractor from some other source for said services
3 or expenses.

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

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

18 G. Public or private non-profit contractor revenues in excess of
19 costs are considered program income or profits in accordance with Code of Federal
20 Regulations definition of "Income" pursuant to 29 CFR 97.32(2). When authorized,
21 program income may be added to the funds committed to the grant agreement. The
22 program income shall be used for the purposes and under the conditions of the grant
23 agreement or as amended unless the Governor of the State of California requires
24 that such income be turned over to the State.

25 6. RECORDS.

26 A. Records relating to the performance of this Contract shall be
27 kept and maintained by Contractor in accordance with the manner and method
28 prescribed by applicable State regulations and guidelines and City requirements,

1 and will be current, complete and available for purposes of inspection and audit
2 during business hours as deemed necessary upon request by representatives of
3 federal, state and local agencies.

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

9 7. FINANCIAL REPORTS.

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

23 B. If the Contractor is subject to the Single Audit Act (SAA), the
24 Contractor shall include this Contract within the scope of the SAA audit. A copy of
25 the SAA final audit report shall be delivered by Contractor to the City of Long Beach
26 within thirty (30) calendar days after its request and, in any event, no later than six
27 (6) months after the end of the then-current fiscal year of Contractor. In the event
28 the Contractor fails to comply with this requirement, the Contractor shall be liable

1 for any costs incurred by City for a substitute audit or review.

2 8. ACCOUNTING PROCEDURES.

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

9 B. The Contractor will establish separate account numbers within
10 its accounting system to account for the expenditures and revenues of this Contract.
11 The Contractor's accounting system will be in compliance with all applicable
12 procedures and Federal and State authorities having jurisdiction over this Contract,
13 and shall be consistent with the fiscal and accounting procedures, including accruals
14 set forth herein. Without limiting the generality of the foregoing, the Contractor shall
15 adhere to the following fiscal and accounting procedures:

16 i. Maintain a bank account and perform monthly bank
17 reconciliations.

18 (a) Deposit all receipts in the bank account promptly
19 and intact.

20 (b) Do not pay any expense directly out of cash
21 receipts.

22 (c) Maintain bank validated copies for every deposit
23 slip in chronological order. Each deposit slip should include sufficient
24 detail to explain the source of the funds being deposited. (This may
25 be done by recording the details on the deposit slip or by attached
26 supporting documentation which may have been received with the
27 receipts).

28 (d) Disburse all funds by check, preferably signed or

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approved electronically by two (2) employees, neither of whom is the bookkeeper or the accounting clerk.

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

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

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

(c) Approve employee time sheets.

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

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

(a) Original invoice from each vendor.

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

(c) Indication that the goods or services were approved for purchase by an authorized individual. This should be by signature and date and should appear on the invoice or on the purchase order or purchase requisition, if such is used by the Contractor.

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

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

(a) Bank statements and bank reconciliations.

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- (b) Deposit slips and supports.
- (c) Checks and supports.
- (d) Time sheets or documentation to verify Contractor's labor costs.
- (e) Cash receipts and cash disbursement journals.
- (f) Requests for reimbursement and supports.
- (g) Financial statements.
- (h) Maintain and file all required tax and personnel reports with appropriate agencies.

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

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

9. INDEPENDENT CONTRACTOR STATUS. It is distinctly understood that in the performance of this Contract, the Contractor shall at all times be considered a wholly independent contractor and that Contractor's obligations to and authority from the City are solely as are preserved by this Contract. Contractor expressly warrants that it will not, at any time, hold itself out or in any manner represent that Contractor or any of its agents, volunteers, subscribers, members, officers or employees are in any manner the officers, employees or agents of the City or the Pacific Gateway Workforce Investment Network (Network), an unincorporated non-profit association. Contractor shall not have any authority to bind the City or Network at any time or for any purpose. Contractor nor any of Contractor's officers, employees or agents shall have any power or authority as agents or employees of the City or Network and shall not be entitled to any of the rights,

1 privileges or benefits of a City or Network employee.

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

17 11. INDEMNITY.

18 A. Contractor shall indemnify, protect and hold harmless City, its
19 Boards, Commissions, and their officials, employees and agents ("Indemnified
20 Parties"), from and against any and all liability, claims, demands, damage, loss,
21 obligations, causes of action, proceedings, awards, fines, judgments, penalties,
22 costs and expenses, including attorneys' fees, court costs, expert and witness fees,
23 and other costs and fees of litigation, arising or alleged to have arisen, in whole or
24 in part, out of or in connection with (1) Contractor's breach or failure to comply with
25 any of its obligations contained in this Agreement, including any obligations arising
26 from the Project's compliance with or failure to comply with applicable laws,
27 including all applicable federal and state labor requirements including, without
28 limitation, the requirements of California Labor Code section 1770 *et seq.* or (2)

1 negligent or willful acts, errors, omissions or misrepresentations committed by
2 Contractor, its officers, employees, agents, subcontractors, or anyone under
3 Contractor's control, in the performance of work or services under this Agreement
4 (collectively "Claims" or individually "Claim").

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

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

19 D. The provisions of this Section shall survive the expiration or
20 termination of this Agreement.

21 12. EMPLOYMENT TRAINING ACT CLAUSES. Contractor shall
22 administer contract within the policies and procedures mandated by the Workforce
23 Investment Act of 1998 and the Network and agrees to comply with the following contract
24 clauses, as applicable, during the duration of the contract period:

- 25 1. Compliance with requirements and/or regulations related to patent
26 rights, copyrights, and rights in data;
- 27 2. Maintenance of records for 7 years;
- 28 3. The Equal Employment Opportunity Act provisions;

- 1 4. The Americans with Disabilities Act of 1990;
- 2 5. The Contract Work Hours and Safety Standards Act;
- 3 6. The Clean Air Act and Environmental Protection Agency regulations;
- 4 7. The Energy Policy Conservation Act;
- 5 8. The Byrd Anti-Lobbying Amendment;
- 6 9. Veteran's Priority Provisions;
- 7 10. Whistle Blower Protection;
- 8 11. Buy American Requirements.

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

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

19 B. Automobile Liability in an amount not less than Five Hundred
20 Thousand Dollars (\$500,000.00) combined single limit per accident for bodily injury and
21 property damage covering owned, non-owned and hired vehicles.

22 C. Workers' Compensation as required by the Labor Code of the State of
23 California and Employers' Liability Insurance with limits of one Million Dollars
24 (\$1,000,000.00) per occurrence.

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

1 Hundred Thousand Dollars (\$100,000.00) Accident Medical and Twenty-Five Thousand
2 Dollars (\$25,000.00) Accidental Death and Dismemberment.

3 E. Blanket Honesty or Comprehensive Crime Bond in an amount of fifty
4 percent (50%) of sums payable under this Contract, or Twenty-Five Thousand Dollars
5 (\$25,000.00), whichever is higher, to safeguard the proper handling of funds by those
6 employee's agents or representatives of the Contractor who sign as the maker of checks
7 or drafts or in any manner authorize the disbursement or expenditure of said funds.

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

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

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

28 14. DRUG-FREE WORKPLACE. Contractor shall comply with

1 Government Code Sections 8350 et seq. and 29 CFR Part 98, in matters relating to
2 providing a drug-free workplace including, but not limited to, the following:

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

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

- 9 i. The dangers of drug abuse in the workplace,
10 ii. The person's or organization's policy of maintaining a
11 drug-free workplace;
12 iii. Any available counseling, rehabilitation and employee
13 assistance programs, and
14 iv. Penalties that may be imposed upon employees for drug
15 abuse violations.

16 C. Ensuring that every employee who provides services under this
17 Contract:

- 18 i. Will receive a copy of Contractor's drug-free policy
19 statement, and
20 ii. Will agree to abide by the terms of Contractor's
21 statement as a condition of employment on this Contract:

22 D. Payments due Contractor may be subject to suspension or
23 termination for failure to carry out the requirements of Government Code Sections
24 8350 et seq. and 29 CFR Part 98, Debarment and Suspension; Drug Free
25 Workplace. As provided in Government Code Section 8357, the City shall not be
26 required to ensure that Contractor provides a drug-free workplace.

27 15. NONDISCRIMINATION.

28 A. In connection with performance of this Agreement and subject

1 to applicable rules and regulations, Contractor shall not discriminate against any
2 employee or applicant for employment because of race, religion, national origin,
3 color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap, or
4 disability. Contractor shall ensure that applicants are employed, and that employees
5 are treated during their employment, without regard to these bases. These actions
6 shall include, but not be limited to, the following: employment, upgrading, demotion
7 or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay
8 or other forms of compensation, and selection for training, including apprenticeship.

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

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

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

28 "During the performance of a contract with the City of Long Beach, the

1 Contractor will provide equal benefits to employees with spouses and its employees
2 with domestic partners. Additional information about the City of Long Beach's Equal
3 Benefits Ordinance may be obtained from the City of Long Beach Business Services
4 Division at 562-570-6200."

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

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

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

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

19 17. CONFIDENTIALITY.

20 A. Contractor shall keep confidential all financial, operations, and
21 performance records relating to its performance of this Contract ("Data") and shall
22 not disclosed the Data or use the Data directly or indirectly other than in the course
23 of services provided hereunder. The obligation of confidentiality shall continue
24 following expiration or earlier termination of this Contract. In addition, Contractor
25 shall keep confidential all information, whether written or oral, or visual, obtained by
26 any means whatsoever in the course of Contractor's performance hereunder for the
27 same period of time. Contractor shall not disclose Data to any third party, nor use it
28 for Contractor's own benefit or the benefit of others without first obtaining the prior

1 written authorization and consent of the City.

2 B. All Data and other information, in whatever form or medium,
3 compiled or prepared by Contractor in performing its services or furnished to
4 Contractor by City shall be the property of City and City shall have the unrestricted
5 right to use or disseminate same without payment of further compensation to
6 Contractor. Copies of Contractor's work product may be retained by Contractor for
7 its own records.

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

10 A. Contractor demonstrates Contractor knew prior to the time City
11 disclosed it; or

12 B. Is or becomes publicly available without breach of this Contract
13 by Contractor; or

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

16 D. Must be disclosed pursuant to subpoena, court order, state or
17 federal WIA rules and regulations, federal Department of Labor rules and
18 regulations, or the rules and regulations of any other governmental agency having
19 jurisdiction over WIA administration.

20 19. NOTICES. Any notice or approval required by this Agreement shall
21 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,
22 postage prepaid, addressed to Consultant at the address first stated above, and to the City
23 at 333 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager with a
24 copy to the City Engineer at the same address. Notice of change of address shall be given
25 in the same manner as stated for other notices. Notice shall be deemed given on the date
26 deposited in the mail or on the date personal delivery is made, whichever occurs first.

27 20. CONTRACT ADMINISTRATION. The City Manager, or designee, is
28 authorized and directed, for and on behalf of the City, to administer this Contract and all

1 related matters, and any decision of the City Manager, or his designee, in connection
2 herewith shall be final.

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

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

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

17 24. TAX REPORTING. As required by federal and state law, City is
18 obligated to and will report the payment of compensation to Contractor on Form 1099-Misc.
19 Contractor shall be solely responsible for payment of all federal and state taxes resulting
20 from payments under this Agreement. Contractor shall submit Contractor's Employer
21 Identification Number (EIN), or Contractor's Social Security Number if Contractor does not
22 have an EIN, in writing to City's Accounts Payable, Department of Financial Management.
23 Contractor acknowledges and agrees that City has no obligation to pay Contractor until
24 Contractor provides one of these numbers.

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

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

4 LEADERSHIP LONG BEACH INC., a
5 California corporation

6 _____, 2015

By Jeff Williams
Name JEFF WILLIAMS
Title EXECUTIVE DIRECTOR

8 _____, 2015

By Veronica Garcia
Name Veronica Garcia
Title Board President

11 "Contractor"

12 CITY OF LONG BEACH, a municipal
13 corporation

14 Feb. 16, 2016

By [Signature]
City Manager

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

Assistant City Manager

15 "City"

16 This Contract is approved as to form on 2-2, 2016

18 CHARLES PARKIN, City Attorney

19 By [Signature]
Deputy

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

EXHIBIT A

WIOA SUBGRANT AGREEMENT

City of Long Beach dba Pacific Gateway

SUBGRANT NO: K698367
MODIFICATION NO: 2
SUBGRANTEE CODE: LBC
DUNS NO: 557398141

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 dba Pacific Gateway
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 dba Pacific Gateway, hereinafter the Subgrantee. The Subgrantee agrees to operate a program in accordance with the provisions of this Subgrant and to have an approved WIOA Local Plan for the above name Subgrantor filed with the Subgrantor pursuant to the Workforce Innovation and Opportunity Act (WIOA). This modification consists of this sheet and those of the following exhibits, which are attached hereto and by this reference made a part hereof:

Funding Detail Chart
LBC Youth Demo Project

ALLOCATION(s)

The Subgrantor agrees to reimburse the Subgrantee not to exceed the amount listed hereinafter 'TOTAL'

PRIOR AMOUNT:	\$3,167,114.00
INCREASE/DECREASE:	\$1,999,146.00
TOTAL:	\$5,166,260.00

TERM OF AGREEMENT

From: 4/1/2015 To: 6/30/2017

Terms of Exhibits are as designated on each exhibit

PURPOSE: To add funding for the Youth Demonstration project in the amount of \$1,999,146 into grant code 1027. Term of this project is from July 1, 2015 to March 31, 2017.

APPROVED FOR SUBGRANTOR (EDD) (By Signature)


APPROVED FOR SUBGRANTEE (By Signature)
Unilateral modification. Subgrantee Signature not required

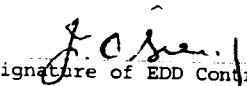

Name and Title
JOSE LUIS MÁRQUEZ
CHIEF
WORKFORCE SERVICES DIVISION

Name and Title

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

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


Signature of EDD Accounting Officer


Signature of EDD Contract Officer

Budget item: 7100	Fund: 0869	Budgetary Attachment: No
Chapter: 010	Statute: 2015	FY: 15/16

SUBGRANT AGREEMENT
FUNDING DETAIL SHEET

SUBGRANT NO: K698367
MODIFICATION NO: 2

City of Long Beach dba Pacific Gateway

I. Allocation

Funding Source	Prior Amount	Increase	Decrease	Adjusted Allocation
WIA/WIOA 25% - Dislocated Worker Rapid Response				
96216 292 Rapid Response Layoff Aversion 07/01/2015 to 06/30/2016 Prog/Element 61/70 Ref 001 Fed Catlg 17.278	\$21,638.00	\$0.00	\$0.00	\$21,638.00
96216 540 Rapid Response by Formula 07/01/2015 to 06/30/2016 Prog/Element 61/70 Ref 001 Fed Catlg 17.278	\$78,297.00	\$0.00	\$0.00	\$78,297.00
Total WIA/WIOA 25% - Dislocated Worker Rapid Response	\$99,935.00	\$0.00	\$0.00	\$99,935.00
WIA/WIOA Formula				
96156 201 Adult Formula RD 1 07/01/2015 to 06/30/2017 Prog/Element 61/00 Ref 101 Fed Catlg 17.258	\$145,884.00	\$0.00	\$0.00	\$145,884.00
96106 301 Youth Formula Rd 1 04/01/2015 to 06/30/2017 Prog/Element 61/00 Ref 101 Fed Catlg 17.259	\$1,915,311.00	\$0.00	\$0.00	\$1,915,311.00
96206 501 Dislocated Worker Rd 1 07/01/2015 to 06/30/2017 Prog/Element 61/00 Ref 101 Fed Catlg 17.278	\$205,984.00	\$0.00	\$0.00	\$205,984.00
Total WIA/WIOA Formula	\$2,267,179.00	\$0.00	\$0.00	\$2,267,179.00
WIA/WIOA National Emergency Grant				
91166 1027 LBC Youth Demo Project 07/01/2015 to 03/31/2017 Prog/Element 62/10 Ref 001 Fed Catlg 17.261	\$0.00	\$1,999,146.00	\$0.00	\$1,999,146.00
92376 1028 Sector Partnerships National Emergency Grant 07/01/2015 to 03/31/2017 Prog/Element 62/10 Ref 001 Fed Catlg 17.277	\$800,000.00	\$0.00	\$0.00	\$800,000.00
Total WIA/WIOA National Emergency Grant	\$800,000.00	\$1,999,146.00	\$0.00	\$2,799,146.00
Grand Total:	\$3,167,114.00	\$1,999,146.00	\$0.00	\$5,166,260.00

NARRATIVE

SUBGRANT NO:K698367
MODIFICATION NO: 2

SUBGRANTEE:City of Long Beach dba Pacific Gateway
FUNDING SOURCE: LBC Youth Demo Project - 1027

TERM OF THESE FUNDS: 07/01/2015 - 03/31/2017

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 modification is to add National Emergency Grant funds in the amount of \$1,999,146 for the Youth Demonstration project into grant code 1027. The term of this project is from July 1, 2015 to March 31, 2017. There is a 10% limit of cash drawn of the award total until the required subgrant exhibits are received and incorporated in the subgrant agreement via modification.

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

WIOA (2015)

Exhibit B
Pacific Gateway Workforce Investment Network
SCOPE OF WORK
Long Beach Youth Demonstration Project

CONTRACTOR: Leadership Long Beach
(Hereinafter referred to as "Contractor")

TERM: July 1, 2015 – March 31, 2017

AMOUNT: Not to Exceed \$220,000

This Long Beach Youth Demonstration Project (Project) is funded through Workforce investment Act Funds (CFDA 17.261) and administered by Pacific Gateway, an administrative entity of the City of Long Beach. Leadership Long Beach, Inc., herein after referred to as Contractor, shall administer the services described in this agreement.

A. SCOPE OF WORK AND PROJECT BUDGET

Under this agreement, Contractor agrees to perform the following tasks:

Activity / Deliverables	Timeline
<p>Leadership Long Beach Trainings-18 Cohorts -Each cohort will be composed of approximately 18-24 individuals. The Leadership Training Program is a 15-hour curriculum focused on shaping a supportive culture while guiding each participant toward a mental readiness and optimism toward their future.</p> <p>In addition, the program will focus on building a framework, around six selected principles of leadership: Vision, Personal Responsibility, Respect, Integrity, Courage and Commitment.</p> <p>The objectives of the training consist of:</p> <ol style="list-style-type: none"> 1. Developing the confidence to step out of your comfort zone toward personal growth. 2. Learning and experiencing six foundational leadership principles. 3. Practice and discuss the process of teamwork in order to better serve as a leader. 4. Establishing connections with the supportive network of the Leadership Long Beach Program. 	<p>March 31, 2017</p>

	Budget
Curriculum Development -A Leadership Program curriculum will be created, to ensure that all trainings are consistent and that any trainers are able to provide the same level of instruction.	\$20,000
Cost per cohort: \$11,000 (Total of 18 Cohorts)	\$200,000
Total Project Budget	\$220,000

B. PROJECT PERFORMANCE REQUIREMENTS

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

C. TECHNICAL ASSISTANCE & MANDATORY MEETINGS

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

D. FINANCIAL REPORTING/INVOICING

Payments will be based upon demonstration of attainment of key deliverables noted in Section A above. **Monthly Activity Reports** demonstrating progress toward these deliverables must accompany each invoice, as verified by Pacific Gateway program manager. Contractor will ensure invoices are accurate and submitted quarterly. Pacific Gateway, 3447 Atlantic Avenue, Long Beach CA 90807, *Attention: Mildred Mota*.

E. GENERAL INFORMATION:

1. Unallowable Activities and Costs

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

1. Political Activities: No financial assistance may be provided for any program, which involves political activities.
2. Maintenance of Effort:
 - a. No currently employed worker shall be displaced by any participant (including partial displacement, such as a reduction in hours or non-overtime work, wages or employment benefits).

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

2. WIA/WIOA and Similar Programs Contract Clauses

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

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

3. Administrative Dispute Resolution

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

agenda of a regular or special meeting of the Executive Committee. The Executive Committee decision will be the final administrative decision.

4. Nepotism

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

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

F. GENERAL PROVISIONS OF WIA/WIOA

Veterans' Priority Provisions: WIA/WIOA and similar funds funded by the U.S. Department of Labor are subject to the provisions of the "Jobs for Veterans Act" (JVA), Public Law 107-288 (38 USC 4215), as implemented by the Final Rule published on December 19, 2008 at 73 Fed. Reg. 78132. The JVA provides priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services. In addition, in accepting these WIA funds, Contractor assures that they will comply with the Veterans' Priority Provisions established by the Jobs for Veterans Act (38 USC 4215).

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

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

ADDITIONAL REQUIREMENTS/REFERENCES

(CODE OF FEDERAL REGULATIONS)

§200.303 Internal Controls.

The non-Federal entity must:

(a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States or the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

(b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.

(c) Evaluate and monitor the non-Federal entity's compliance with statutes, regulations and the terms and conditions of Federal awards.

(d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.

(e) Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75883, Dec. 19, 2014]

General Procurement Standards.

(a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary

actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also §200.212 Suspension and debarment.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)(1) The non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

PERFORMANCE AND FINANCIAL MONITORING AND REPORTING

§200.327 Financial Reporting.

Unless otherwise approved by OMB, the Federal awarding agency may solicit only the standard, OMB-approved governmentwide data elements for collection of financial information (at time of publication the Federal Financial Report or such future collections as may be approved by OMB and listed on the OMB Web site). This information must be collected with the frequency required by the terms and conditions of the Federal award, but no less frequently than annually nor more frequently than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes, and preferably in coordination with performance reporting.

200.328 Monitoring and Reporting Program Performance.

(a) *Monitoring by the non-Federal entity.* The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity. See also §200.331 Requirements for pass-through *entities*.

(b) *Non-construction performance reports.* The Federal awarding agency must use standard, OMB-approved data elements for collection of performance information (including performance progress reports, Research Performance Progress Report, or such future collections as may be approved by OMB and listed on the OMB Web site).

(1) The non-Federal entity must submit performance reports at the interval required by the Federal awarding agency or pass-through entity to best inform improvements in program outcomes and productivity. Intervals must be no less frequent than annually nor more frequent than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes. Annual reports must be due 90 calendar days after the reporting period; quarterly or semiannual reports must be due 30 calendar days after the reporting period. Alternatively, the Federal awarding agency or pass-through entity may require annual reports before the anniversary dates of multiple year Federal awards. The final performance report will be due 90 calendar days after the period of performance end date. If a justified request is submitted by a non-Federal entity, the Federal agency may extend the due date for any performance report.

(2) The non-Federal entity must submit performance reports using OMB-approved governmentwide standard information collections when providing performance information. As appropriate in accordance with above mentioned information collections, these reports will contain, for each Federal award, brief information on the following unless other collections are approved by OMB:

(i) A comparison of actual accomplishments to the objectives of the Federal award established for the period. Where the accomplishments of the Federal award can be quantified, a computation of the cost (for example, related to units of accomplishment) may be required if that information will be useful. Where performance trend data and analysis would be informative to the Federal awarding agency program, the Federal awarding agency should include this as a performance reporting requirement.

(ii) The reasons why established goals were not met, if appropriate.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(c) *Construction performance reports.* For the most part, onsite technical inspections and certified percentage of completion data are relied on heavily by Federal awarding agencies and pass-through entities to monitor progress under Federal awards and subawards for construction. The Federal awarding agency may require additional performance reports only when considered necessary.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, the non-Federal entity must inform the Federal awarding agency or pass-through entity as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the Federal award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.

(e) The Federal awarding agency may make site visits as warranted by program needs.

(f) The Federal awarding agency may waive any performance report required by this part if not needed.

§200.329 Reporting on Real Property.

The Federal awarding agency or pass-through entity must require a non-Federal entity to submit reports at least annually on the status of real property in which the Federal Government retains an interest, unless the Federal interest in the real property extends 15 years or longer. In those instances where the Federal interest attached is for a period of 15 years or more, the Federal awarding agency or pass-through entity, at its option, may require the non-Federal entity to report at various multi-year frequencies (e.g., every two years or every three years, not to exceed a five-year reporting period; or a Federal awarding agency or pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years).

SUBRECIPIENT MONITORING AND MANAGEMENT

§200.330 Subrecipient and Contractor Determinations.

The non-Federal entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with Federal awarding agencies and pass-through entities. Therefore, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. The Federal awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.

(a) *Subrecipients.* A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. See §200.92 Subaward. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

- (1) Determines who is eligible to receive what Federal assistance;
- (2) Has its performance measured in relation to whether objectives of a Federal program were met;
- (3) Has responsibility for programmatic decision making;
- (4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
- (5) In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

(b) *Contractors.* A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. See §200.22 Contract. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the non-Federal entity receiving the Federal funds:

- (1) Provides the goods and services within normal business operations;
- (2) Provides similar goods or services to many different purchasers;
- (3) Normally operates in a competitive environment;
- (4) Provides goods or services that are ancillary to the operation of the Federal program; and
- (5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

(c) *Use of judgment in making determination.* In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.

§200.331 Requirements for Pass-Through entities.

All pass-through entities must:

- (a) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any

of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. Required information includes:

(1) Federal Award Identification.

(i) Subrecipient name (which must match the name associated with its unique entity identifier);

(ii) Subrecipient's unique entity identifier;

(iii) Federal Award Identification Number (FAIN);

(iv) Federal Award Date (see §200.39 Federal award date);

(v) Subaward Period of Performance Start and End Date;

(vi) Amount of Federal Funds Obligated by this action;

(vii) Total Amount of Federal Funds Obligated to the subrecipient;

(viii) Total Amount of the Federal Award;

(ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);

(x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official,

(xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;

(xii) Identification of whether the award is R&D; and

(xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs).

(2) All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award.

(3) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports;

(4) An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal Government or, if no such rate exists, either a rate negotiated between the pass-through entity and the subrecipient (in compliance with this part), or a de minimis indirect cost rate as defined in §200.414 Indirect (F&A) costs, paragraph (f) of this part.

(5) A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this part; and

(6) Appropriate terms and conditions concerning closeout of the subaward.

(b) Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described in paragraphs (d) and (e) of this section, which may include consideration of such factors as:

(1) The subrecipient's prior experience with the same or similar subawards;

(2) The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F—Audit Requirements of this part, and the extent to which the same or similar subaward has been audited as a major program;

(3) Whether the subrecipient has new personnel or new or substantially changed systems; and

(4) The extent and results of Federal awarding agency monitoring (e.g., if the subrecipient also receives Federal awards directly from a Federal awarding agency).

(c) Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in §200.207 Specific conditions.

(d) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:

(1) Reviewing financial and performance reports required by the pass-through entity.

(2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.

(3) Issuing a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the pass-through entity as required by §200.521 Management decision.

(e) Depending upon the pass-through entity's assessment of risk posed by the subrecipient (as described in paragraph (b) of this section), the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:

(1) Providing subrecipients with training and technical assistance on program-related matters; and

(2) Performing on-site reviews of the subrecipient's program operations;

(3) Arranging for agreed-upon-procedures engagements as described in §200.425 Audit services.

(f) Verify that every subrecipient is audited as required by Subpart F—Audit Requirements of this part when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in §200.501 Audit requirements.

(g) Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records.

(h) Consider taking enforcement action against noncompliant subrecipients as described in §200.338 Remedies for noncompliance of this part and in program regulations.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§200.332 Fixed Amount Subawards.

With prior written approval from the Federal awarding agency, a pass-through entity may provide subawards based on fixed amounts up to the Simplified Acquisition Threshold, provided that the subawards meet the requirements for fixed amount awards in §200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.

§200.421 Advertising and Public Relations.

(a) The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television, direct mail, exhibits, electronic or computer transmittals, and the like.

(b) The only allowable advertising costs are those which are solely for:

(1) The recruitment of personnel required by the non-Federal entity for performance of a Federal award (See also §200.463 Recruiting costs);

(2) The procurement of goods and services for the performance of a Federal award;

(3) The disposal of scrap or surplus materials acquired in the performance of a Federal award except when non-Federal entities are reimbursed for disposal costs at a predetermined amount; or

(4) Program outreach and other specific purposes necessary to meet the requirements of the Federal award.

(c) The term "public relations" includes community relations and means those activities dedicated to maintaining the image of the non-Federal entity or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

(d) The only allowable public relations costs are:

(1) Costs specifically required by the Federal award;

(2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of the Federal award (these costs are considered necessary as part of the outreach effort for the Federal award); or

(3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern, such as notices of funding opportunities, financial matters, etc.

(e) Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in paragraphs (b) and (d) of this section;

(2) Costs of meetings, conventions, convocations, or other events related to other activities of the entity (see also §200.432 Conferences), including:

(i) Costs of displays, demonstrations, and exhibits;

(ii) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(iii) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs;

(4) Costs of advertising and public relations designed solely to promote the non-Federal entity.