

**WIOA Title I Youth Services Agreement
Local Workforce Development Area 13**

This Agreement is entered into by and between the City of Memphis, as administrative entity for the Consortium of Local Governments, and the Workforce Investment Network (WIN), LWDA 13 (hereinafter referred to as the "City" or "WIN"), a proud partner of the American Job Center network, and _____ (hereinafter referred to as "Contractor"), for services to be provided in accordance with the Workforce Innovation and Opportunity Act (WIOA).

PROGRAM DESCRIPTION

Title of the Project WIN Training and Employment for Youth

Agreement Period Upon Execution – End Date of Contract

Total Funds Obligated for this Agreement \$ _____

Total Cost Per Participant \$ _____

Number of Youth Served New: _____

Carry over: _____

Grant WIOA Title I Youth

Company's Data Universal Numbering System (DUNS) number: _____

IN WITNESS WHEREOF, the parties to this Agreement have caused their duly authorized representatives to execute this Agreement as of the date first written above.

CONTRACTOR
_____, _____

WORKFORCE INVESTMENT NETWORK
Kevin D. Woods, Executive Director

Signature Date

Signature Date

Approved for the CITY OF MEMPHIS
Jim Strickland, Mayor

Signature Date

Approved as to form

Attest

Chief Legal Officer/City Attorney

Deputy Comptroller

**WIOA Title I Youth Services Agreement
Local Workforce Development Area 13
(In School/Out of School)**

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Attachments

A1 STATEMENT OF WORK

A2 PROJECT BUDGET

PART I – GENERAL ASSURANCES

All recipients of funding under the WIOA from WIN must agree to the following General Assurances as a part of the final Agreement for funds.

1. LEGAL COMPLIANCE WITH WIOA AND OTHER APPLICABLE LAWS/POLICIES

The Contractor shall conduct all activities under this Agreement in accordance with the Workforce Innovation and Opportunity Act and all applicable rules, regulations, directives, instructions, guidance, advisories and policies promulgated and issued pursuant thereto; all applicable Federal, State, and local laws, rules, policies, ordinances and regulations in effect or promulgated during the term of this Agreement, including but not limited to those dealing with employment, discrimination, safety, health, the Fair Labor Standards Act, as amended, and Drug Free Workplace Act; the Five-Year Strategic State Plan; the WIN Financial Guide Book; and any future amendments made to any of the above.

The Contractor further agrees to review and comply in full with the terms set forth in the LWDA 13 Financial Guide Book (which may be amended from time to time).

The Contractor further agrees to follow the regulations as specified in the grant between the USDOL, TDOL & WD, and the City of Memphis Workforce Investment Network included in this Agreement:

- 29 CFR Part 37 (Nondiscrimination and Equal Opportunity Requirements);
- 29 CFR Part 97 (Uniform Administrative Requirements for Grants and (Cooperative Agreements to State and Local Governments); or 41 CFR 29 – 70 (Administrative Requirements) and any subsequent amendments;
- 29 CFR Part 96 (Audit Requirements for Grants, Contracts, and Other Agreements);
- 29 CFR Part 98 (Debarment and Suspension);
- 29 CFR Part 94 (Drug Free Workplace);
- 29 CFR Part 93 (Lobbying Certification).

2. CONFLICT OF INTEREST AND NEPOTISM

The City and Contractor shall ensure the prohibition of any conflict of interest or the appearance of such in awarding and fulfilling its contractual obligations. Contractor shall establish safeguards to prohibit employees, agents, etc. from using their position(s) for a purpose that is/gives the appearance of any gain for themselves, their relatives or others with whom they have a business, personal or other ties. The Contractor warrants that no part of the total Agreement amount shall be paid directly or indirectly to an employee or official of the City of Memphis, WIN, or State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Agreement.

The Contractor warrants that no employees or participants, pursuant to this Agreement, will be placed in a capacity in which he/she is or will be supervised by an immediate family member.

Immediate family means: a parent, parent-in law, step-parent, child, spouse, brother, sister, step-brother, step-sister, grandparent, grandchild, son-in-law, brother-in-law, daughter-in-law, sister-in-law, nephew, niece, aunt, uncle, or other family members.

3. LICENSURE. The Contractor shall be licensed pursuant to all applicable federal, state and local laws, ordinances, rules and regulations and shall, upon request, provide proof of all licenses.

4. SERVICES TO BE PROVIDED. The Contractor agrees to perform all services and comply with all conditions contained in the Statement of Work, included herein as Attachment 1. In the event that

Contractor fails to provide the agreed services, for whatever reason, Contractor shall reimburse City any program funds expended for such non-delivered services. The Contractor shall provide services hereunder pursuant to WIN's RFP and the Contractor's response thereto, both of which are incorporated herein by this reference.

5. TERM. This Agreement shall be effective for the period commencing and ending on the dates first indicated on the contractor signature sheet hereof. The City shall have no obligation for services rendered by the Contractor outside the specified Term. This Agreement shall not be binding until it has been signed by the Contractor and the authorized representatives of the City in accordance with applicable ordinances, laws and regulations.

6. CHANGES TO THE AGREEMENT AND EXTENSIONS. Any changes or amendments to this Agreement shall be in writing and approved by both parties. Requests for changes to the Agreement that do not change the scope of the Agreement or increase the total budget amount (i.e., transfer of funds among budget line items for reasonable, allowable, allocable, and necessary costs, corrections of typographical errors in the initial Agreement, etc.) may be submitted in writing, giving full details supporting such request, to the WIN Executive Director. Transfer of funds revisions may not be made without prior written approval of WIN. Any changes in the Total Funds Obligated for this Agreement, extension of the Agreement period, or scope of the Agreement may be made only by mutual concurrence of both the Contractor and the City after written approval by WIN and the City of Memphis Mayor, and shall be incorporated by written amendment.

Any extension must be requested at least thirty (30) days prior to the expiration date of the Agreement and may not exceed any extension options specified in the Request for Proposals. If the extension of the Agreement necessitates additional funding beyond that included in the original Agreement, the increase in the City's maximum liability will also be effected through an amendment to the Agreement.

7. CERTIFICATION OF PARTICIPANTS – DOCUMENTATION OF CERTIFICATION. Contractors receiving WIOA funds shall enroll only those individuals eligible under the appropriate WIOA program guidelines after receipt of a WIN-issued certification of eligibility form authorized by a WIN representative for youth services. Contractor will be liable for repayment from non-program or grant funds of any cost resulting from enrollment of any individual to be served under this Agreement without eligibility certification from WIN.

8. LAST DATE FOR ENROLLMENT OF PARTICIPANTS. In an effort to allow adequate time for participants to enroll and complete the training program and follow up before the end of the Agreement period, the deadline for enrollment of participants shall be as set forth in the mandated Youth Contractor Outcomes attached hereto as Part 3, paragraph 17 (k).

9. INDEPENDENT CONTRACTORS. The parties hereto, in the performance of this Agreement, shall not act as agents, employees, partners, joint venturers, or associates of one another. It is expressly acknowledged that the parties are independent contracting entities, and nothing in this Agreement shall be construed to create a principal/agent relationship or to allow either party to exercise control or direction over the manner or method by which the other party transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever and neither party shall become liable for any representation, act or omission of the other party. Contractor is solely responsible for the acts or omissions or its employees hereunder.

10. SUBCONTRACTS AND ASSIGNMENTS. Contractor shall not assign any of its interests or enter into a subcontract for any of the services performed under this Agreement without prior written approval from the City and WIN. If such subcontracts are approved by the City and WIN, they shall contain, at a minimum, the General Assurances included herein and sections of this Agreement pertaining to Conflicts of Interest, Lobbying, Nondiscrimination, Public Accountability, and Public Notice. Notwithstanding any use of approved subcontractors, the Contractor shall be the prime Contractor and shall be responsible for all work performed.

11. EMPLOYABILITY SKILLS TRAINING. The Contractor shall provide employability skills training to all WIN participants. Such training shall include, but not be limited to: resume writing techniques, job searching skills, preparing for an interview, dressing appropriately, “soft skills” training, and other work readiness training. Said Employability Skills curriculum shall be submitted to and approved by WIN.

Soft skills are the non-technical skills, abilities, and traits that workers need to obtain employment and function in a specific employment environment.

12. PERFORMANCE STANDARDS. The Contractor shall meet or exceed all applicable local, state, and/or national performance standards prescribed by the WIOA performance model and/or by local WIN policies including those performance measures set forth in this Agreement. The City or WIN has the right to discontinue the referral of customers if Contractor fails to comply with the requirements herein or if Contractor’s performance and placement rates fall below the performance outcome goals established by WIN. The Contractor hereby acknowledges that the State of Tennessee establishes annual performance measure targets for LWDA 13; therefore, the performance measures stated herein are subject to change upon WIN providing notice to Contractor of the new performance measure targets.

13. MONITORING ACTIVITIES. The Contractor’s activities conducted pursuant to this Agreement shall be subject to monitoring and evaluation by the City, the Federal government, the State government or their duly appointed representatives. Where findings exist during the program, Contractor shall implement and undertake corrective action in accordance with WIN policy.

14. GRIEVANCE PROCEDURES. The Contractor shall establish a system through which recipients of services may present grievances or complaints about the operation of the service program. These procedures shall be clearly made known to all participants, staff and other interested parties. The Contractor’s grievance procedures must comply with all applicable provisions of Section 188 of the Workforce Innovation and Opportunity Act and 20 CFR 667.600.

15. NONDISCRIMINATION

- A. The Contractor shall abide by and take affirmative action when necessary to assure that no person shall be excluded from participation, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Agreement or in the employment practices of the Contractor on the grounds of race, color, religion, sex, national origin, age, handicap or disability, or any other classification protected by Federal, Tennessee State constitutional, or statutory law, and shall comply fully with the nondiscrimination and equal opportunity provision of the WIOA; including the Nontraditional Employment for Women Act of 1991; Title VI and VII of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; Title IX of Education Amendments of 1972, as amended; Americans with Disabilities Act of 1990, as amended; and with all applicable requirements imposed by or pursuant to regulations implementing those laws, including but not limited to 29 CFR Part 37.

- B. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination. In the event of noncompliance with City nondiscrimination clauses or with all provisions of Executive Orders 11141 (age), 11246, 11375 (women), 12086 (Vietnam veterans), 110478 (federal employees), 11625 (minority business), 11701 (veterans), Title 41, Chapter 60 (handicapped) and specifically the handicapped affirmative action clause in Section 60 – 741.6.9 of the OFCCP Rules, and any and all Federal laws prohibiting discrimination, this Agreement may be terminated or suspended in whole or in part by the City of Memphis, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

16. PROVISIONS FOR TERMINATION – PERFORMANCE GOALS – SANCTIONS

- A. **Termination without Cause.** The City may terminate this Agreement without cause for any reason. Said termination shall not be deemed a breach of contract by the City. Excepting termination due to unavailability of funds pursuant to subsection (C) below, the City shall give the Contractor at least thirty (30) days written notice of such termination before the effective termination date. The Contractor shall be entitled to compensation for authorized expenditures and satisfactory services completed as of the termination date, but in no event shall the City be liable to the Contractor for compensation for any service which has not been rendered. The final decision as to the amount for which the City is liable shall be determined by the City. Should the City exercise this provision, the Contractor shall not have any right to any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- B. **Termination for Cause.** If the Contractor fails to fulfill its obligations under this Agreement in a timely or proper manner, or if the Contractor breaches any terms of this Agreement, the City shall have the right to immediately terminate the Agreement and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by virtue of any breach of this Agreement by the Contractor. The final decision as to the amount for which the City is liable shall be determined by the City. Should the City exercise this provision, the Contractor shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- C. **Funding Availability/Appropriation.** This Agreement is subject to the appropriation and availability of State and/or Federal funds. In the event the funds are not appropriated or are otherwise unavailable, the City shall terminate this Agreement upon written notice to the Contractor. Upon written notice, the Contractor shall immediately cease all work associated with the Agreement. Such termination by the City shall not be deemed a breach of contract by City, and the Contractor shall have no right to recover from the City any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount as a result of the non-availability of such funds.
- D. **Suspension/Probation.** In addition to the City's right to terminate the contract and not in limitation thereof, if the Contractor fails to fulfill its obligations or fails to meet performance standards under this Agreement, the City shall have the right to place the Contractor on probation/suspension, thereby precluding the Contractor from applying for WIOA Title I Youth funds for a specified period to be determined by WIN.

- E. **Withholding of Payments.** The City shall, upon the recommendation of WIN, unilaterally withhold payments if the Contractor fails at the end of any quarter to produce at least seventy-five percent (75%) of planned quarterly goals as specified in the Youth Contractor's Outcomes referenced in Part 3 hereof or if the Contractor fails to submit required information and/or documents (i.e., performance reports, intake/certification information, termination notices, VOS, etc.) to WIN in a timely manner. In addition, City reserves the right to withhold future disbursement of funds herein and pursuant to any future agreements until Contractor satisfies the requirements hereof.
- F. **Partial De-Obligation of Funds.** City shall partially de-obligate funds provided hereunder if the Contractor's (a) actual expenditures; (b) participant enrollment/participation; or (c) actual performance standards at the end of any quarter are *less than seventy-five percent (75%) of the quarterly planned expenditures/goals* as specified in the Youth Contractor's Outcomes referenced in Part 3 hereof. Contractor will be notified of the intent to withhold payment or partially de-obligate funds at least ten (10) calendar days prior to implementation. Documentation of progress toward the goals shall be obtained from data regularly submitted by the Contractor and/or from other special reports requested by WIN.

17. REPORTING REQUIREMENTS – RECORDS RETENTION AND AVAILABILITY

- A. **Reporting Requirements.** The Contractor shall comply with all reporting requirements in the manner specified by WIN and all applicable laws, rules, regulations, orders, and instructions. The Contractor shall submit routine documentation reporting participant activity (enrollments, terminations, etc.) within forty-eight (48) hours after the activity occurs. The Contractor shall enter case notes for each participant into the electronic case management and tracking system (VOS) monthly and such case notes for any particular month shall be entered by the close of business on the fifth (5th) business day of the following month.
- B. **Records Maintenance.** The Contractor shall maintain full and complete records and books to document the work performed and all charges under this Agreement. Contractor shall maintain an adequate system of internal controls to account properly for the receipts and disbursements of WIOA funds. Contractor's books, records and documents, insofar as they relate to work performed or money received under this Agreement, will be subject to audit, at any reasonable time and upon reasonable notice, by the U.S. Department of Labor, the Tennessee Department of Finance and Administration, the Tennessee Department of Labor and Workforce Development, the City of Memphis, WIN, or any of their duly authorized representatives. The Contractor shall make all WIOA and other pertinent and necessary records available for such audit. The records of not-for-profit entities shall be maintained in accordance with the Accounting of Grant Funds in the State of Tennessee, published by the Tennessee Comptroller of the Treasury. All financial statements shall be prepared in accordance with generally accepted accounting principles.
- C. **Records Retention.** Contractor shall retain all books and records, including property and equipment records, related to activities hereunder for a period of three (3) full years after completion of the obligations or until final payment is made to the Contractor, whichever is later ("Records Retention Period"). Such records that may be kept, maintained or possessed by the Contractor, shall be open for inspection during regular business hours by the City, the state government, the federal government or any duly authorized representatives. If litigation, audit or other action involving this Agreement or records pertaining hereto has begun prior to the expiration of the Records Retention Period, the Contractor shall retain the records beyond the Records Retention Period until such litigation, audit findings, or claims have been resolved. Should the Contractor cease to do business within the Records Retention Period, the Contractor shall forward

all records pertaining hereto to the City.

18. FISCAL REQUIREMENTS

- A. **Maximum Liability.** The Contractor shall not exceed the Total Funds Obligated as specified on the Contract Signature Sheet hereof, unless said budget has been amended in writing as set forth herein.
- B. **Reimbursed Costs.** The City agrees to pay the Contractor the cost per participant on a performance basis meeting the thresholds/milestones described below.

First 1/3 payment: Enrollment

WIOA application completed in VOS
IEP and OAS in system
Pre-assessment
Activities entered
Initial Case Note
ALL supporting documentation verifying eligibility

Second 1/3 payment: Exit

Proof of performance measure

- a. post-assessment
- b. Employment verification
- c. Credential attainment verification

Third 1/3 payment: Completion of 12 month follow-up

Completion of quarterly follow up paperwork for all 4 quarters after exit

In the event the total payments by the City exceed the expenses incurred by the Contractor or the Maximum Liability, the Contractor shall promptly refund the difference to the City.

- C. **Payment Request/Invoices.** The Contractor shall submit payment requests and invoices for payment with all necessary supporting documentation to the WIN Operations Department located at 480 Beale Street; Memphis, Tennessee 38103 no later than ten (10) calendar days after the end of the previous month. If payment requests are not received in accordance hereof, WIN shall have the right to make no payment for that billing period unless WIN's Executive Director or his/her authorized designee authorizes an exception in writing. In no event shall WIN have any obligation to reimburse Contractor for invoices submitted more than sixty (60) days after the end of the billing period.
- D. **Payment as Acceptance.** WIN shall make monthly payments to Contractor pursuant to the Project Budget hereof. The payment of any invoice by the City shall not prejudice the City's right to object to or question any invoice or matter in relation thereto. Such payment by the City shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the costs invoiced therein.
- E. **Invoice Reduction.** The Contractor will receive payment only for allowable participant's thresholds/milestones in accordance with applicable grant regulations and the cost per participant. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment made therefore, which are determined by the City, on the basis of audits or monitoring,

not to constitute valid payments. If an audit of the Contractor's records indicates that WIOA funds have been paid not according to regulations, the Contractor shall repay from non-program/grant funds said disallowable costs to the City of Memphis within thirty (30) days receipt of written notice from the City of final disallowance.

The City reserves the right to deduct any amounts that are or shall become due and payable to the City from the Contractor from any amounts which are or shall become due and payable to the Contractor under this Agreement or any Agreement between the Contractor and the City.

- F. **Indirect Costs.** If applicable, should the Contractor request reimbursement for indirect cost, the Contractor must submit to the City a copy of the indirect cost rate approved by the appropriate Federal and/or State agency. The Contractor will be reimbursed indirect costs in accordance with the approved indirect cost rate up to amounts and limitations pursuant to the Project Budget. Once the Contractor makes an election to treat a given cost as direct or indirect, it must apply that treatment consistently and may not change during the Agreement period. Any changes to the approved indirect cost rate must have prior approval of the applicable Federal and/or State agency. If the indirect cost rate is provisional during the period of this Agreement, once the rate becomes final, the Contractor agrees to remit any overpayment of funds to the City.
- G. **Cost Allocation.** If any part of the costs to be reimbursed under this Agreement are joint costs involving allocation to more than one program or activity, such costs shall be allocated and reported in accordance with the provisions of Department of Finance and Administration Policy Statement 03 or any amendments or revisions made to this policy statement during the Agreement period. This provision is applicable only to non-profit entities.
- H. **Program Income.** The Contractor shall submit to the WIN office a quarterly report of gross income earned from WIOA supported activities. Such earnings include, but are not limited to: interest income on advances, income from fees for services performed and from conferences, and funds provided to the Contractor that are in excess of the cost associated with the service provided. *Any such earnings shall be expended only on allowable costs in accordance with the WIOA.*
- I. **Accounting System Standards.** The Contractor shall maintain all data elements used in required state and federal reports in accordance with applicable laws, regulations, and local procedures.
- J. **Separation of Functions.** The Contractor shall ensure that key fiscal functions are appropriately separated to ensure the integrity of financial transactions.
- K. **Inaccurate Invoices.** The Contractor shall ensure that every officer, director, agent or employee authorized to act on its behalf in receiving or depositing funds into program accounts or in issuing financial documents, invoices for payment, checks or other instruments of payment for program costs submits accurate and properly supported invoices for payment. In the event that the City makes overpayments or payment to the Contractor based on inaccurate or improperly supported invoices, Contractor shall reimburse City for any payments/overpayments made based on improperly supported invoices or expended in violation of this Agreement or any applicable local, state or federal laws, rules or regulations.
- L. **City's Right to Withhold Certain Amounts and Make Application Thereof.** If evidence is produced before final settlement of all or any balances that the Contractor has failed to pay laborers employed to perform services hereunder or for materials or services used herein, or if the City

suspects the same, the City may withhold such balances and upon receipt of evidence satisfactory to the City as to the amount due for such labor and materials, the City, acting as the agent of the Contractor, may settle and pay for the same and charge the amounts to the Contractor and deduct the same from the said balance.

- M. **Travel Expenses.** Where travel expenses are otherwise allowed and payable herein, such expenses for travel (i.e., transportation, meals and/or lodging) shall be in accordance with the amounts and limitations specified in City of Memphis Travel Policy and Procedures and/or the State of Tennessee Comprehensive Travel Regulations, as each may be amended from time to time. In the event of a conflict, the provisions of the State's Comprehensive Travel Regulations shall govern and control. This includes advance written travel authorization, submission of travel claims, documentation requirements, and reimbursement rates. No travel advances will be made by the City.
- N. **WIOA Property Procurement and Accountability.** If the terms of this Agreement allow for the reimbursement for the cost of goods, materials, supplies, equipment, and/or contracted services, such procurement shall be made on a competitive basis, including the use of competitive bidding procedures, where practicable.

Within five (5) days of termination or cancellation of this Agreement, Contractor shall return all property and equipment to the WIN office in as good order and condition as when received, except for reasonable use and wear. In no event shall Contractor retain any property without the express written consent of City. In the event Contractor fails to return said property, City shall have the right to withhold from Contractor's compensation the purchase price of said property.

All property and equipment purchased by WIN shall be deemed WIN property and shall be for the exclusive use and benefit of Workforce Innovation and Opportunity Act participants and approved programs. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable tangible personal property and equipment furnished by the WIN for the temporary use under this Agreement until relieved by the Tennessee Department of Labor & Workforce Development and the City or WIN.

WIN Contractors and subcontractors must follow WIN's Property Management Policy when WIOA funds are used for the acquisition of all tangible non-expendable personal property items \$5,000 or more per unit and sensitive items (defined below).

The following procedures must be followed:

- a. **Types of Property for Which Accountability Must Be Maintained**
- i. Non-expendable property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit (Examples include furniture, machinery, education equipment, office operational equipment, etc.)
 - ii. Sensitive equipment having a unit cost of \$100 or more (Examples include computers, scanners, computer software, calculators, tape recorders, weed eaters, lawn mowers, televisions, typewriters, cameras, cellular phones, fax machines, printers, all communications and amplifying equipment, etc.)
 - iii. Tool "kits" and sets

- iv. All tools and equipment carrying a manufacturer's serial number
- b. Acquisition of Property
Purchases of sensitive equipment or non-expendable property with an acquisition cost of \$5,000 or more using WIOA funds must be approved in advance by WIN and stated in the Agreement prior to purchase.
- c. Transfer of WIOA Property Between Locations
Property may not be moved from one location to another without prior written consent from WIN.
- d. Lost/Stolen Property
Contractor shall immediately notify WIN's Property Manager in the event that property purchased with WIOA funds is discovered to be missing, stolen, destroyed or damaged.
- e. Inventory of Property
All WIOA-acquired property shall be regularly inventoried and updated. All property shall be readily available to City representatives upon request for inventory purposes. Upon termination of the Agreement, a property inventory list shall be submitted to the City.
- f. Property Maintenance
Contractor shall maintain all property and equipment in good condition and repair.
- g. Security Interest
The City shall take legal title to all property and equipment purchased totally or in part with funds provided under the Agreement. It is the intent of this Agreement and the parties to create and acknowledge a security interest and to continue the security interest in favor of WIN in the property and equipment acquired by the Contractor pursuant to the provisions of this Agreement.
- h. Surplus and Disposal of Property
Tennessee Department of Labor & Workforce Development shall have approval authority for the related transfer, donation, and / or disposal of surplus property purchased with WIOA funds. A Property Disposal Request Form shall be submitted to WIN's Property Manager. WIN will facilitate the approval to surplus an item from the State of Tennessee. WIN Contractors and subcontractors must follow WIN's Property Management Policy when disposing of all tangible non-expendable personal property and sensitive items purchased with WIOA funds.
- O. **Charges to Service Recipients Prohibited.** The Company shall not collect any amount in the form of fees or reimbursements from the recipients of any service provided and paid by WIN pursuant to this Agreement.
- P. **Contract Closeout.** Upon expiration or termination of the Agreement, Contractor shall provide WIN with a complete closeout package within the time period specified by WIN. A closeout accomplishes the performance and financial end of the Agreement services and must comply with WIN requirements and follow the prescribed formats. The City shall not be responsible for payment of any invoice submitted to WIN after the submission of the final expenditure accounting report. Pursuant to the Agreement, if total reimbursements by the City exceed the contract payment amount

and/or is determined to be unallowable cost, the Company shall refund the City within thirty (30) calendar days of notification.

- Q. **Final Contract Invoice and Closeout Report.** The Contractor shall submit to WIN a final expenditure accounting (“Close-out Report”), in form and substance acceptable to WIN, within thirty (30) calendar days after the termination date of the Agreement or the City’s budget year end of June 30th, whichever comes first. The Contractor shall close out its accounting records at the end of the Agreement period in such a way that reimbursable expenditures and revenue collections are *not* carried forward.

19. PERSONNEL STANDARDS – WORKPLACE AND TRAINER REQUIREMENTS. Contractor hereby represents and agrees that it has and will continue to have qualified personnel to perform the services hereunder. If applicable, the Contractor shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Agreement, all employee compensation, benefits, taxes, etc.

- A. **Personnel Standards.** The Contractor shall institute written personnel policies, procedures and systems which include minimum provisions for employment, upgrading, demotion, or transfer; recruitment, layoff, or termination; and rate of pay and other forms of compensation.
- B. **Prohibition Against Unfair Practices to Current Employees.** No currently employed worker shall be displaced by any participant (including partial displacement such as a reduction in the hours of non-overtime work, wages, or employment benefits). No program under this Agreement shall impair: existing contracts for services; or existing collective bargaining agreements, unless the employer and the labor organization concur in writing with respect to any elements of the proposed activities which affect such agreement, or either such party fails to respond to written notification requesting its concurrence within thirty (30) days of receipt.
- a. No participant shall be employed or job opening filled when any other individual is on layoff from the same or any substantially equivalent job, or when the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the intention of filling the vacancy so created by hiring a participant whose wages are subsidized under WIOA.
 - b. No jobs shall be created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed individuals.
 - c. The Contractor shall not enter into a WIOA contract if currently involved in any labor dispute, which involves work stoppage, layoff or hiring freeze.
- C. **Health and Safety Standards.** The Contractor shall ensure that health and safety standards established under State and Federal law, otherwise applicable to working conditions of employees, shall be equally applicable to working conditions of participants engaged in programs and activities under Title I of WIOA.
- D. **HIPAA Compliance.** The Company shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Health Information Technology for Economic and Clinical Health Act (HITECH) and any other relevant laws and regulations regarding privacy (collectively the “Privacy Rules”). The obligations set forth in this Section shall survive the termination of this Agreement.

The Company warrants that it is familiar with the requirements of the Privacy Rules and will comply with all applicable HIPAA requirements in the course of this Agreement.

- E. **Workers' Compensation Benefits.** The Contractor shall be solely liable and responsible for any workers compensation benefits to any person as a result of injuries arising from or connected with any work performed by or on behalf of the Contractor pursuant to this Agreement. To the extent that workers' compensation benefits are not provided by WIN, the Contractor agrees to make provisions for such benefits in accordance with state law or to provide insurance coverage for injuries suffered by participants.
- F. **Trainer Requirements.** The Contractor agrees to employ only qualified trainers for any training program funded under this Agreement.
- G. **Employment of Illegal Immigrants.** Contractor shall comply with all federal, state and local laws, rules and regulations prohibiting the employment of individuals who are not legally authorized to work in the United States. Contractor shall not knowingly (i) utilize the services of illegal immigrants; or (ii) utilize the services of any subcontractor who will utilize the services of illegal immigrants in the performance hereunder. In the event the Contractor fails to comply with any and all local, state and federal laws prohibiting the employment of individuals not legally authorized to work in the United States, this Agreement may be immediately terminated, and the Contractor may be prohibited from contracting to supply goods and/or services to the City for a period of one (1) year from the date of discovery of the usage of illegal immigrant services in the performance of this Agreement.

20. PUBLIC ACCOUNTABILITY

The Contractor agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the Contractor agrees to display a sign stating: "NOTICE: This Contractor is a recipient of taxpayer funding. If you observe an employee engaging in any activity which you consider to be illegal, improper or wasteful, please call the State Comptroller's toll-free hotline: 1-800-232-5454."

Said sign shall be displayed in a prominent place, located near the passageway(s) through which the public enters in order to receive grant supported services.

21. PUBLIC NOTICE

Pursuant to this agreement, as it relates to the Contractor providing youth services to participants, all notices, informational pamphlets, press releases, reports, signs and similar public notices prepared and released by the Contractor, that relate to employment and training, shall include the statement:

This project is funded under an agreement with the City of Memphis, State of Tennessee Department of Labor and Workforce Development, and Workforce Investment Network (WIN), a proud partner of the American Job Center network.

Contractor also agrees to include statements in all advertisements that assure that qualified applicants will receive consideration for employment and/or participation without regard to race, color, sex, religion or national origin. Any such notices by the Contractor shall be approved by the State.

22. PROHIBITED ADVERTISING

The Contractor shall not refer to this Agreement or the Contractor's relationship with the City hereunder in commercial advertising in such a manner as to state or imply that the City endorses Contractor or Contractor's services hereunder. It is expressly understood and agreed that the obligations set forth in this section shall survive the termination of this Agreement in perpetuity.

23. POLITICAL ACTIVITIES

The Contractor shall not use financial assistance received under WIOA or participants funded under WIOA to support political activities.

24. RELIGIOUS/SECTARIAN ACTIVITIES

The Contractor shall ensure that funds made available under this Agreement will not be used for religious purposes consistent with Federal and State law. The Contractor shall not place participants whose wages are subsidized under WIOA in positions which involve construction, operation or maintenance of any facility which is used or is to be used for sectarian instruction or as a place of worship (except with respect to the maintenance of a facility that is not primarily or inherently devoted to sectarian instruction or religious worship, in a case in which the organization operating the facility is part of a program or activity providing services to participants). Company hereby understands and agrees that there shall be no religious worship, instruction or proselytizing by or in the presence of participants, as part of or in connection with activities herein.

25. ENVIRONMENTAL TOBACCO SMOKE

Pursuant to the provisions of the Federal "Pro-Children Act of 1994 and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines.

26. INVESTIGATIONS

In the event that City becomes aware of an investigation conducted by City officials, state officials, Federal officials or other officials concerning matters of which City has an interest (i.e., misappropriation of funds, abuse, etc.), City has the right to cease all referrals to Contractor until the matter has been resolved to City's satisfaction and/or the investigation has been officially closed by the investigating party. In the event that Contractor is found guilty of the allegations/charges, City shall immediately terminate this Agreement.

27. JURISDICTION

This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Tennessee. All actions, whether sounding in contract or tort, relating to the validity, construction, interpretation and enforcement of this Agreement shall be instituted and litigated in the courts of the State of Tennessee located in Shelby County, Tennessee. In accordance herewith, the parties to this Agreement submit to the jurisdiction of the courts of the State of Tennessee, located in Shelby County, Tennessee.

28. ENTIRE AGREEMENT – PRIORITY OF TERMS

This Agreement, the Parts hereof, and the Attachments and any exhibits, amendments and modifications hereto, shall constitute the entire agreement among the parties relating to the subject matter hereof, and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. No stipulation, representation or statement made by either party to the other, prior to the execution of this Agreement, and not expressed herein, shall be deemed to be or taken as part of this Agreement,

which shall be the sole measure of the liability and duty of each party. In the event of any conflicting provisions herein, all parts of this Agreement shall be construed in the following priorities:

1. This Agreement, as amended;
2. Question and Answers posted on the Website for the applicable Request for Proposal
3. The applicable Request for Proposal;
4. Contractor's Proposal.

29. WAIVER

Failure by any party to this Agreement to insist in any one or more cases upon the strict performance of any terms, covenants, conditions, or provisions of this Agreement shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by a written amendment signed by all parties.

30. SEVERABILITY. If any terms and conditions of this Agreement are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Agreement are declared severable.

31. CITY LIABILITY. The City shall have no liability except as specifically provided in this Agreement.

32. FORCE MAJEURE. The obligations of the parties to this Agreement are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.

33. COVENANT AGAINST CONTINGENT FEES. The Company warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Company, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Company any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this provision, the City shall have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

34. PUBLIC RECORDS. Notwithstanding anything to the contrary contained herein or within any other document supplied to the City by the Company, the Company understands and acknowledges that the City is a governmental entity subject to the State of Tennessee Public Records Act. Any reports, data or other information supplied to the City regarding services hereunder may be subject to disclosure as a public record in accordance with the laws of the State of Tennessee.

35. ORGANIZATION STATUS AND AUTHORITY. The Company represents and warrants that it is an entity duly organized, validly existing and in good standing under the laws of the State of Tennessee; it has the power and authority to own its properties and assets and is duly qualified to carry on its business in every jurisdiction wherein such qualification is necessary. Each person executing this Agreement represents that: he/she is lawfully authorized to sign the Agreement on behalf of the party he/she represents and the execution, delivery and performance of this Agreement has been duly authorized by all requisite action and will not violate any provision of law, any order of any court or other agency of government, the organizational documents of the Contractor, any provision of any indenture, agreement or other instrument to which the Contractor is a party.

36. HEADINGS. Section headings are for reference purpose only and shall not be construed as part of

this Agreement.

37. CONTRACTING WITH SMALL AND MINORITY FIRMS AND WOMEN'S BUSINESS ENTERPRISE. If applicable, the Contractor shall take affirmative action to ensure that small, women and minority-owned businesses, which have been certified by the City, are utilized when possible as sources of supplies, equipment, construction and services herein.

38. CONFIDENTIALITY. Contractor shall comply with all federal, state and local laws regarding privacy and data security, including but not limited to Tennessee Breach Security Law, codified at Tenn. Code Ann. §27-18-2101 et seq. While performing work under this Agreement, the Contractor may gain access to proprietary and/or confidential information that, if disclosed to third parties, may be damaging to the City or its officials or employees. Such information shall include materials considered to be confidential as a matter of law (e.g., personnel records), and shall also include (i) all materials in any form developed or created by the City related to funding and financial and business information; (ii) all information owned, possessed or used by the Contractor, which is communicated to, learned, developed or otherwise acquired by the Contractor in the performance of the Services for the City; (iii) the terms, conditions and pricing contained herein; and (iv) any other information that the Contractor has been advised by the City is confidential, privileged or proprietary. Confidential information, as used in this Agreement, shall not include (i) information in the Contractor's possession prior to disclosure by the City; (ii) information generally available to the public or that becomes available to the public through a source other than the City, or (iii) information that was rightfully obtained by the Contractor from a third party who is under no obligation of confidentiality to the City with respect to such information. The Contractor shall hold confidential information obtained from the City in confidence at all times during and after termination or expiration of this Agreement. The Contractor shall neither use, disclose nor communicate such confidential information without the prior written consent of the City, except as required by law and only to those employees who have a right to know. Contractor shall require its employees to comply with the requirements of this provision and the requirements of the provision titled "Rights in Data" below.

The Company shall report to the City any instances of unauthorized disclosure of personally identifiable information that comes to the Company's attention. The Company shall make any such report within twenty-four (24) hours after the instance has come to the Company's attention. The Company, at the sole discretion of the City, shall provide no cost credit monitoring services for individuals that are deemed to be part of a potential disclosure. The Company shall bear the cost of notification to individuals having personally identifiable information involved in a potential disclosure event, including individual letters or public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to the City under this Agreement or otherwise available at law.

39. RIGHTS IN DATA. The Contractor agrees that all reports, studies, plans, models, drawings, specifications, and any other information or data of any type produced under this Agreement ("Data"), whether or not the same is accepted or rejected by the City, shall be considered a work for hire and remain the exclusive property of WIN. The signing of this Agreement shall constitute a complete transfer of ownership, intellectual property and copyright of all Data upon the Contractor's delivery of such Data to the City or upon completion of the services hereunder, whichever occurs first. The Contractor shall not construe such transfer as a grant for usage nor can the Contractor revoke transfer.

40. REMEDIES CUMULATIVE. All remedies available to the City herein are cumulative and shall be in addition to all other rights and remedies provided by law. The termination or suspension of this

Agreement shall not limit the City from pursuing other remedies available at law or in equity.

41. PATENT INDEMNIFICATION. The Contractor warrants that any goods/services furnished hereunder do not infringe or violate any United State or Canadian patent, trademark, copyright, trade secret or other proprietary right of any third party; that it shall defend all suits that may arise with respect thereto; and that it shall indemnify, defend, save and hold harmless the City, its officials, employees, agents from and against all liability, suits, claims, costs or expenses, including without limitation attorney and expert witness fees, for or by reason of any actual or alleged claim of infringement. This indemnification shall survive the expiration or termination of this Agreement.

42. COMMUNICATIONS

All instructions, notices, consents, demands, or other communications required or contemplated by any of the parties in this Agreement shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class U.S. mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as may be hereafter specified by written notice. Any correspondence for the City shall be addressed to the following:

Kevin D. Woods, Executive Director
Workforce Investment Network
480 Beale Street
Memphis, TN 38103
901-576-6811
901-576-6844 (fax)

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of hand delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

43. INSURANCE/HOLD HARMLESS. Contractor shall not commence any work under this Agreement until it has obtained and caused its subcontractors to procure and keep in force all insurance required herein. Contractor shall furnish WIN a Certificate of Insurance and/or policies, upon request, attested by a duly authorized representative of the insurance carrier evidencing that the insurance required hereunder is in force and effect. All insurance companies must be acceptable to the City of Memphis and licensed in the State of Tennessee. Insurance shall be evidenced by certificates and/or policies, as determined by the City. Failure of the Contractor to maintain or renew coverage or to provide evidence of renewal may result in termination of the contract by City. Failure of the City to identify any deficiency in the evidence that is provided shall not be construed as a waiver of the Contractor's obligation to maintain such insurance. The City reserves the right to review these requirements and to modify insurance coverage and their limits when deemed necessary and prudent.

If any of the insurance requirements are non-renewed at the expiration dates, payment to the Contractor may be withheld until those requirements have been met; or at the option of the City, the City may pay the renewal premiums and withhold such payments from any monies due the Contractor. The Contractor shall have and maintain the following insurance coverage during the life of the Agreement and any extensions.

- A. **Commercial General Liability:** Comprehensive General Liability Insurance, including Premises and Operations, Contractual Liability, Independent Contractor’s Liability, and Broad Form Property Damage Liability coverage with minimum limits as follows:

General Aggregate	\$2,000,000
Products – Completed Operations	\$1,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence (bodily injury and property damage)	\$1,000,000
Fire Damage (any one fire)	\$50,000
Medical Expenses (any one person)	\$5,000

- B. **Fidelity Bond** (Employee Dishonesty/Theft Crime Coverage) in an amount not less than **\$1,000,000 Each Occurrence**

- C. **Automobile Liability** covering owned, non-owned, and hired vehicles with minimum limits of:

Each Occurrence – Combined Single Limits	\$1,000,000
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- D. **Professional Liability** with a minimum limit of **\$2,000,000 Each Occurrence/Aggregate**

This insurance is required only if the training provided is of a nature to be taught by a licensed professional for whom this coverage is available. When required, such coverage shall be maintained for at least three (3) years from the termination or expiration of this agreement.

- E. **Worker’s Compensation:** Employer’s Liability in accordance with the statutory requirements and minimum limits of the State of Tennessee:

Employer’s Liability (each accident)	\$100,000
Each Employee (per disease)	\$100,000
Policy Limit (per disease)	\$500,000

- F. **Umbrella Liability** with a minimum limit of **\$2,000,000 Each Occurrence/Aggregate**

Note: Company shall be responsible for maintaining any and all Property Insurance on its own equipment.

- G. **Insurance Cancellation or Material Change**

Company shall provide notice to City within three (3) business days following receipt of any notice of cancellation or material change in Company’s insurance policy from Company’s insurer. Such notice shall be provided to City and WIN by registered mail, return receipt requested, to the following addresses:

City of Memphis	Workforce Investment Network
Attn: Risk Management	Attn: Contract Services Unit
2714 Union Avenue Extended, Suite 200	480 Beale Street
Memphis, Tennessee 38112	Memphis, Tennessee 38103

H. Additional Insured

Each Certificate of Insurance shall name the City of Memphis, its officials, agents, employees, and representatives as an Additional Insured. This should be indicated on each Certificate of Insurance. **See note below.**

Note: The additional insured endorsements shall be attached to the Certificate of Insurance, and the Certificate of Insurance shall also state: "The additional insured endorsement is attached to the Certificate of Insurance."

I. Hold Harmless/Indemnification

To the extent permitted by applicable law, Contractor shall, at its own expense, save, hold harmless, protect, indemnify and defend the City, WIN and their officers, agents and employees from and against any and all claims, demands, suits, actions, penalties, damages, settlements, costs, expenses, or other liabilities of any kind and character arising out of or in connection with the breach of this Agreement by Contractor, its employees, agents or servants or any negligent act or omission to act of the Contractor, its employees, agents or servants which occurs pursuant to performance of this Agreement. The provisions of this paragraph shall not apply to any loss or damage caused solely by the acts, errors, or omissions of WIN, its officers, employees and agents. This indemnification obligation shall survive the expiration or earlier termination of this Agreement.

Contractor expressly understands and agrees that any insurance protection required hereunder or otherwise provided by the Contractor shall in no way limit the Contractor's responsibility to indemnify, defend, save and hold harmless the City as required herein.

44. Federal Funding Accountability and Transparency Act (FFATA). This Agreement requires the Company to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Company is responsible for ensuring that all applicable requirements of FFATA are met and that the Company provides information to the City as required. The City must report each action that obligates \$25,000 or more in Federal funds. See more information regarding requirements at: <https://www.usaspending.gov/about/usaspending/Pages/default.aspx>.

The Company shall comply with the following:

A. Reporting of Total Compensation of the Company's Executives.

- (1) The Company shall report the names and total compensation of each of its five most highly compensated executives for the Company's preceding completed fiscal year, if in the Company's preceding fiscal year it received:
 - i. 80 percent or more of the Company's annual gross revenues from federal procurement contracts and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and sub awards); and
 - ii. \$25,000,000 or more in annual gross revenues from federal

- procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and sub awards); and
- iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m(a), 78o(d)) or § 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).

As defined in 2 C.F.R. § 170.315, “Executive” means officers, managing partners, or any other employees in management positions.

- (2) Total compensation means the cash and noncash dollar value earned by the executive during the Company’s preceding fiscal year and includes the following (for more information see 17 § C.F.R. 229.402(c)(2)):
 - i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v. Above-market earnings on deferred compensation which is not tax qualified.
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- B. The Company must report executive total compensation described above to the City by the end of the month during which this Agreement is established.
- C. If this Agreement is amended to extend the Term, the Company must submit an executive total compensation report to the City by the end of the month in which the amendment to this Agreement becomes effective.
- D. The Company will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Agreement. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

45. Whistleblower Protection. Company, Subcontractor, or Subgrantee shall comply with the requirements set forth in 41 U.S.C. §4712 and hereby agrees to:

- A. Inform its employees working on any federal award they are subject to the whistleblower rights and remedies of the pilot program;
- B. Inform its employees in writing of employee whistleblower protections under 41 U.S.C. §4712 in the predominant native language of the workforce; and,
- C. Include such requirements in any agreement made with a subcontractor or subgrantee.

The City of Memphis, as administrative entity for the Consortium of Local Governments and Workforce Investment Network (WIN), LWDA 13, a proud partner of the American Job Center network, is an Equal Opportunity Employer. The Career Center System is an Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities. TTY: 1-800-848-0299

PART 2 – CERTIFICATIONS

By signing and entering into this agreement, Contractor agrees to the following certifications:

1. DRUG FREE WORKPLACE

Pursuant to the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F, the regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, that they will maintain a drug-free workplace.

Contractor certifies that it will provide a drug-free workplace by:

- A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's/Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- B. Establishing a drug-free awareness program to inform employees about:
 - a. The dangers of drug abuse in the workplace;
 - b. The grantee's/Contractor's policy of maintaining a drug-free workplace;
 - c. Any available drug counseling, rehabilitation, and employee assistance programs; and
 - d. The penalties that may be imposed on employees for drug abuse violations occurring in the workplace;
- C. Making it a requirement that each employee to be engaged in the performance of the Grant/Agreement be given a copy of the statement required by paragraph (a);
- D. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the Grant/Agreement, the employee will:
 - a. Abide by the terms of the statement, and
 - b. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) calendar days after such a conviction;
- E. Notifying the agency, in writing, within ten (10) calendar days after receiving notice under subparagraph (D) (b) from an employee or otherwise receiving actual notice of such conviction;
- F. Taking one of the following actions, within thirty (30) calendar days of receiving notice under subparagraph (D) (b), with respect to any employee who is so convicted:
 - a. Taking appropriate personnel action against such an employee, up to and including termination; or
 - b. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency;
- G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs A – F.

2. DEBARMENT, SUSPENSION, INELIGIBILITY AND RESPONSIBILITIES

Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency;
- B. Have not within a three (3) year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- C. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (B) of this certification; and
- D. Have not within a three (3) year period preceding this Agreement had one or more public transactions (Federal, State, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the City if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals are excluded or disqualified.

3. LOBBYING ACTIVITY

Contractor certifies, to the best of its knowledge and belief, that:

- A. No Federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and in extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an office or employee of Congress, or an employee of a Member of Congress in connection with this grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form – LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
- C. Contractor shall require that the language of this certification be included in award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreement) and that all sub-recipients of federally appropriated funds shall certify

and disclose accordingly.

The certifications set out above are material representations of fact upon which reliance was placed when the agency determined to award the grant. If it is later determined that the grantee knowingly rendered a false certification or otherwise violates the requirements of the certifications, the agency, in addition to any other remedies available to the federal government, may take action authorized under the federal law. (The knowledge and information is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business.)

PART 3 – CONTRACTOR RESPONSIBILITIES

The Contractor shall:

1. Conduct outreach and recruitment to enroll contracted the number of youth participants by the deadlines set forth herein. For in-school youth programs, students in their junior year of high school shall not exceed 50% of Contractor's total number of enrollees.
2. Assist WIN in determining eligibility for all program participants by collecting, reviewing and retaining all documentation for WIN's review and final approval. Selection criteria and processes must be established and utilized to determine that special consideration is given so that youth in target groups, including but not limited to, foster care youth, school dropouts, pregnant and parenting youth, and offenders are selected for enrollment in the program.
3. Provide each youth with an objective assessment, which shall include a review of basic skills, occupational skills, work readiness skills, employability, interest, aptitudes (including interest and aptitudes for nontraditional jobs), supportive service needs and developmental needs.
4. Develop with each youth participant an Individual Service Strategy (ISS) plan that will reflect and utilize the information obtained from the objective assessment. The ISS shall identify primary educational and employment goals, and describe the training activities and appropriate services the youth will receive to achieve those goals. Whenever the training activities change, the Contractor shall update the ISS to reflect those changes.
5. Provide each participant with a comprehensive orientation to the program.
6. Maintain on file and submit upon request all pre- and post-testing documentation, grade reports, test scores, documents showing skills competencies acquired, certificates of completions issued, State-certified licenses, credentials, diplomas, etc.
7. Program services shall cover all the required program elements as detailed in the related Contractor's proposal. Moreover, each youth participant shall receive program services covering the program elements that have been identified through the objective assessment and listed on the individual's ISS.

A youth that is incarcerated during any point of programming should be prorated at the point of incarceration.

Example 1: If a youth is enrolled (33% of funding), but cannot meet the exit requirement, (performance) the remaining 2/3rds cannot be paid.

Example 2: A youth is enrolled (1/3rd of funding), meets performance exit point (1/3), is then incarcerated the last 1/3 cannot be paid out.

If the youth is temporarily incarcerated, we would ask that the student be put on a gap in service, if and only if the performance exit can be met.

8. Provide preparation for post-secondary educational opportunities, as appropriate.
9. Provide case management services for each participant, including the monthly completion of case notes in VOS by the fifth (5th) day of each month for the previous month's activities.
10. Monitor and maintain daily attendance. At a minimum, participant's progress must be monitored and documented monthly.
11. Provide preparation for unsubsidized employment opportunities and facilitate effective connections to intermediaries (e.g., One-Stop Career Centers) with strong links to the job market and local and regional employers, as appropriate.
12. Provide workshops that address employment preparation, job search strategies, employment retention, and financial literacy skills, as appropriate.
13. Participate in technical assistance activities and other WIOA-related training provided to Contractors, as sponsored by WIN. Contractors are required to attend WIN's training and monthly meetings for the youth program, as well as the monthly meeting for the Opportunity Youth Collaborative Action Network. Attendance of the required meetings is mandatory.
14. Submit all financial, management information systems (VOS), performance and other reports required by WIN in accordance with specified time frames.
15. Meet all performance objectives as required by the Tennessee Department of Labor and Workforce Development and the WIOA.
16. Comply with local performance benchmarks as required by the Workforce Development Board and Youth Council.
17. Satisfy the following mandated youth outcomes:

<u>Activity</u>	<u>Goal</u>
a. Enrollment, number of youth served per this agreement Note: Not more than 50% of in-school youth enrollees shall be classified as juniors	100% (not to drop below 80%)
b. Number of participants who exit program prior to attainment of a goal	0% (not to exceed 20%)
c. Youth Primary Indicators of Performance	

WIA Performance Metrics	WIOA Performance Metrics	LWDA 13 Agreed Target PY 2016	LWDA 13 Agreed Target PY 2017
Youth Common Measure			
<i>Placement</i>	<i>Employment Rate 2nd Quarter after exit*</i>	80%	81%
<i>Attainment</i>	<i>Employment Rate 4th Quarter after exit**</i>	82%	83%
<i>Literacy/Numeracy</i>	<i>Credential Attainment within 4 Quarters after exit*</i>	83.5%	84%

*Revised Measure **New Measure

LWDA 13's Performance measures are negotiated with the State of Tennessee and are subject to change annually. Contractor will be responsible for meeting the State-negotiated performance measures plus five percent (5%) in their programs.

- d. Appropriate staff to attend mandatory technical assistance training 100% (not to fall below 80%)
- e. Number of case notes entered into VOS monthly not less than 2 per month
- f. Entry of each youth participant case notes into VOS 5th business day of following month
- g. Submission of applicable participant paperwork within 48 hours after the activity occurs
- h. Monthly submission of financial invoices in a timely manner (within 30 days) when the participant meets that milestone for payment 10th business day of following month
- i. Quarterly expenditures (project budget divided by 8) within 10% of cumulative goal
- j. Report number of dropouts, TANF recipients, ex-offenders, foster care clients enrolled
- k. Quarterly enrollment goal
 - First Quarter 75% of youth to be served
 - Second Quarter 100% of youth to be served*

ATTACHMENT 1 – STATEMENT OF WORK

This section describes the specific services and/or training that will be provided under this Agreement between the City and the Contractor including the reason the program is needed and specific components that will be included in the program.

The City, by and through WIN, issued a Request for Proposals to solicit providers of youth services pursuant to the WIOA. The Contractor submitted a proposal in response to the City's RFP. The services shall include, but not be limited to those specified in the City's RFP and the Contractor's proposal thereto, both of which are incorporated herein by this reference.

Said services shall be provided in accordance with the applicable terms and conditions set forth in the City's RFP. It is understood and agreed among the parties that in the event of any conflict between the terms and conditions of this Agreement and any amendment thereto and the terms and conditions contained either in the RFP or the Contractor's proposal, the order of precedence shall be as follows:

1. This Agreement, as amended;
2. Question and Answers posted on the Website for the applicable Request for Proposal, which is incorporated herein by reference;
3. The applicable Request for Proposal, incorporated herein by reference;
4. Contractor's Proposal, incorporated herein by reference.

Where applicable, the attached MOUs govern the provision of program elements that are not directly provided by the Contractor.

ATTACHMENT 2 – PROJECT BUDGET

1. PERFORMANCE PAYMENT CONTRACTS

This is a performance payment contract based on procurement requirements as specified in WIOA. This means that the Contractor's cost per participant is reimbursed based on the eligible participant meeting the threshold/milestone as identified in the contract. The following requirements apply to this Agreement:

WIOA Regulations; Final Rule [20 CFR Part 652, et al.], especially:

- General Fiscal and Administrative Rules – 20 CFR § 667.200
- Allowable Costs/ Cost Principles – 20 CFR § 667.200 (c)
- Administrative Costs and Limitations – 20 CFR § 667.210 and 20 CFR § 667.220
- Program Income – 20 CFR § 667.200 (a) (5)
- Electronic Code of Federal Regulations (Title 2: Grants and Agreements)

PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES,
AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Other administrative and/or fiscal rules that are applicable to the use of WIOA Title I grant funds such as Cost Classification, Financial Management Reporting, Property Management, etc. are contained in the General Assurances of this Agreement and the appropriate OMB Circulars. Further guidance on the proper financial management of WIOA Title I grant funds will be made available to Contractors through technical assistance guides produced by the Tennessee LWDA 13, the Tennessee Department of Labor and Workforce Development and the United States Department of Labor.

Project Budget and Line Item definitions were developed by the Workforce Investment Network Fiscal Unit in accordance with guidelines and other requirements issued by the Tennessee Department of Labor and Workforce Development.

The contract amount is exclusive of cost for supportive services, stipends, incentives, and participant's wages, in which these costs will be paid directly by WIN. For descriptions of supportive services or additional information, see WIN's website at www.workforceinvestmentnetwork.com for WIN (LWDA 13) Supportive Services (Policy Number 2014-06) and Incentives Awards (Policy Number 2016-02). Participant wages will be paid as part of LWDA 13's Work Experience Program.

The Contractor shall comply with the following terms and conditions:

- A. **Bank Account.** The Contractor is not required to maintain a separate bank account for WIOA funds, but all cost reimbursement expenditures must be posted to separate General Ledger accounts assigned to the Agreement.
- B. **Accounting System.** Contractor shall follow the generally accepted accounting principles as promulgated by the National Council of Government Accounting.
 - a. Accounting shall be of the double-entry type.

- b. Accounting systems shall provide for the control of assets, liabilities, fund balances, revenues and expenditures by various cost categories of WIOA.
 - c. Adequate ledgers, journals and other books of account shall be maintained and shall be organized to follow consistent rules for aggregation of detailed data to the summary level.
 - d. Accounting systems must be supported by sufficient source documentation which identifies the source and use of Agreement funds.
- C. **Travel Reimbursement.** Pursuant to Budget Summary Submitted, WIN agrees to reimburse Contractor for actual, reasonable and documented travel expenses incurred, subject to the total funding approved for travel. Notwithstanding the foregoing, such travel expenses shall be in accordance with the City's and State of Tennessee's Travel Policy and Procedures, as may be amended from time to time. In the event of a conflict, the State of Tennessee's Travel Policy and Procedures will govern. This includes advance written travel authorization, submission of travel claims, documentation requirements, and reimbursement rates. No travel advances will be made by the City.

2. COST ALLOCATION PRINCIPLES APPLIED TO THIS AGREEMENT

- A. Where applicable, the Contractor shall explain the method(s) to be used to allocate shared costs among multiple Workforce Innovation and Opportunity Title I agreements with the City. This may occur when one service provider is approved for two (2) or more agreements under the same or different grants (such as Adults and Youth and/or when one service provider is approved for programs under several grants such as On the Job training under Dislocated Worker and Youth).