

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: Recommendation to Execute a Second Amendment to a Vocational Training Agreement with Camino Real (C2002-278)

Expenditure: No additional expenditure

RECOMMENDATION

The Human Resources Director recommends that Council authorize the execution of a Second Amendment to a Vocational Training Agreement with Camino Real (C2002-278). No funding is being added.

FUNDING

No funding is required.

BACKGROUND

The Workforce Investment Act (WIA) is a federally funded grant that provides employment and training services to adults, dislocated workers, and the youth of America. Under this grant, vocational training is the primary mechanism that allows job seekers to upgrade their skills and re-enter the workforce.

The City of Torrance provides these trainings to the public through programs and services operated by the Workforce Investment Network (WiN). The WiN in turn subcontracts with vocational training schools in the local area that offer courses that have been approved by the State of California and placed upon the State's Eligible Training Provider List (ETPL).

Camino Real is a State approved vocational training school (on the ETPL) and has been providing instruction to WiN customers through an existing service agreement as a contractor. The courses of study offered by this vocational school have proven most beneficial to job seekers who wish to be retrained in order to remain competitive in today's job market.

In 2004, the WiN established a Contract Approval Policy that states "*training vendors...currently approved by the Board and meeting Board standards may be eligible for renewal of their agreement without additional consideration from the Board.*"

Those approval standards state "Past performance must...show...an Entered Employment (Placement) Rate of 70%".

ANALYSIS

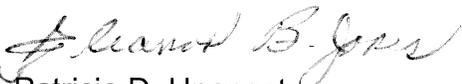
As a contractor, Camino Real has met or exceeded this requirement and the WDD is satisfied by the level of service that they have provided. Because this agreement was only effective until December 31, 2005, the WDD would like to request the extension of this agreement until June 30, 2006. No funding is being added.

Also, in December of 2005, changes to WIA funding and legislation prompted the WiN to approve a transition to a single payment system for all vocational training agreements – in contrast to the traditional bench mark payment system. This Second Amendment to the Camino Real agreement is designed to bring it more in line with federal legislation. Additional Amendments to all other vocational training agreements will be brought before Your Honorable Body in the near future for your review and approval.

The Amendment has already been completed and reviewed by the City Attorney as to form. The Amendment has been finalized and is ready for signature.

Respectfully submitted,

ELAINE M. WINER
Human Resources Director

By: 
Patricia D. Unangst
Workforce Development Division Manager

CONCUR:



Elaine M. Winer
Human Resources Director



LeRoy Jackson
City Manager

Attachment:

- A. Second Amendment to the Vocational Training Agreement with Camino Real (C2002-278)
- B. First Amendment to the Vocational Training Agreement with Camino Real (C2002-287)
- C. Original Vocational Training Agreement with Camino Real

SECOND AMENDMENT TO AGREEMENT

This Second Amendment to Agreement C2002-278 is made and entered into as of December 31, 2005, by and between the CITY OF TORRANCE, a municipal corporation ("CITY"), and Camino Real, a California Corporation ("CONTRACTOR").

RECITALS:

- A. CITY and CONTRACTOR entered into an Agreement on December 10, 2002 (C2002-278) whereby CONTRACTOR agreed to provide occupational skills training.
- B. The original Agreement was effective through June 30, 2005.
- C. The original Agreement was Amended on June 28, 2005 and extended until December 31, 2005.
- D. The CITY is satisfied with the level of service provided by CONTRACTOR and wishes to extend the contract to June 30, 2006.

AGREEMENT:

- 1. Paragraph 2 "Term and Amount" is amended to read in its entirety as follows:

"2. Term and Amount:

This Agreement will continue in full force and effect until June 30, 2006 for an amount not to exceed \$150,000.00 (Agreement Total)."

- 2. Exhibit D "Terms of Payment" is amended to read in its entirety as follows:

1. General Terms

- A. Failure of the Contractor to comply with the requirements of this Exhibit will constitute a material breach of Agreement, upon which the City may cancel, terminate, or suspend this Agreement.
- B. The terms of payment will be applied to students registered and enrolled in an authorized training program during the term of this agreement. Compensation for the courses covered in this agreement will be paid at the published tuition rates as maintained on the ETPL.
- C. Any costs incurred or payments earned by the Contractor over the sums set out in the training voucher and purchase order - for all ETPL courses - will be at the sole risk and expense of the Contractor. The City will not pay more than the amount set forth in the authorized training voucher and purchase order.
- D. Providing that the Contractor is not in default under the terms of this Agreement and the referred course is in good standing and meets state requirements (for ETPL courses), the Contractor and the City agree that the training course(s) listed on the authorized training voucher and purchase order will be paid upon the submission of an invoice after enrollment.
 - (1) Enrollment into training is defined as the completion of course registration activities and the start of the course. Verification of registration must be submitted to the City before invoicing or accompany the invoice for the invoice to be paid.
 - (2) Course Completion is defined as satisfactory completion of the training curriculum and attainment of all required competencies. Verification of course completion, in a format pre-approved by the City, must accompany the final report packet. Verification of course completion may include skill attainment certificates, certificates of completion, professional registration, professional licensing, and Associate and Baccalaureate degrees.

2. Refund Policy For Participant Dropping Out

- A. Per the refund policy established by the Workforce Investment Network (WiN), Contractor will reimburse the City, on an hourly basis, for any uncompleted course work by a participant who has dropped out.

3. Invoicing Services

- A. Contractor will prepare an invoice for payment of services listing the student's name, the course number, the ETPL Identification number (for ETPL related courses), the class title, the unit price, additional charges, the amount, and backup documentation. Contractor will also include proof of Pell grant and other financial aid eligibility and status of financial aid

application.

- B. The Contractor will prepare and submit an invoice to the City upon student enrollment and the receipt of an authorized training voucher and purchase order. A document confirming registration will serve as proof of enrollment.
- C. The Contractor will prepare and submit a final report packet to the City upon student course completion. The accompanying documentation must be submitted to the City in the final report packet: 1) a document confirming course completion, in accordance with the definition of course completion above, will serve as proof of completion; 2) time and attendance records; and 3) student's final performance evaluation.
- D. The Contractor will maintain time, attendance records, and progress reports for all students enrolled in training.
- E. Failure to comply with any record keeping or reporting requirements or any other terms included in this Agreement will be grounds for the City to:
 - a. Withhold payment against submitted invoice until such compliance is demonstrated; and/or
 - b. Cancel, terminate, or suspend this Agreement.

3. In all other respects, the Agreement dated December 10, 2002 between CITY and CONTRACTOR is ratified and reaffirmed and is in full force and effect.

CITY OF TORRANCE,

CAMINO REAL
a California Corporation

Dan Walker, Mayor

By: _____
Julie Chin, Director

ATTEST:

Sue Herbers, City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By: _____
[Insert Name], Deputy City Attorney

AMENDMENT TO AGREEMENT

This Amendment to Agreement C2002-278 is made and entered into as of June 30, 2005, by and between the CITY OF TORRANCE, a municipal corporation ("CITY"), and Camino Real, a California Corporation ("CONTRACTOR").

RECITALS:

- A. CITY and CONTRACTOR entered into an Agreement on December 10, 2002 (C2002-278) whereby CONTRACTOR agreed to provide occupational skills training.
- B. The original Agreement was effective through June 30, 2005.
- C. The CITY is satisfied with the level of service provided by CONTRACTOR and wishes to extend the contract to December 31, 2005.

AGREEMENT:

- 1. Paragraph 2 "Term and Amount" is amended to read in its entirety as follows:

"2. Term and Amount:

This Agreement will continue in full force and effect until December 31, 2005 for an amount not to exceed \$150,000.00 (Agreement Total)."

- 2. Paragraph 20 "Compliance With Statutes and Regulations" is amended to read in its entirety as follows:

"20. Compliance With Statutes and Regulations:

CONTRACTOR will be knowledgeable of and will comply with all applicable federal, state, county and city statutes, rules, regulations, ordinances and orders. These shall include, but are not limited to:

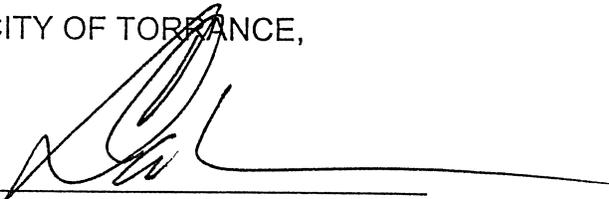
C2002-278

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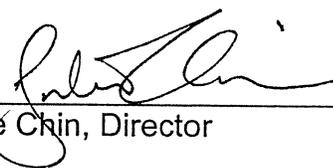
- (1) State Energy and Efficiency Policy & Conservation Act (Title 24, California Administrative Code);
- (2) Clean Air Act (Section 306, 42 USC 1857(h)); and
- (3) Clean Water Act (Section 508, 33 USC 1368, Executive Order 11738 and Environmental Protection Agency Regulations (40 CFR part 15) where applicable to contracts, subcontracts, and subgrants of amounts in excess of \$100,000.

3. In all other respects, the Agreement dated December 10, 2002 between CITY and CONTRACTOR is ratified and reaffirmed and is in full force and effect.

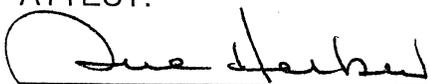
CITY OF TORRANCE,


 Dan Walker, Mayor

CAMINO REAL
 a California Corporation

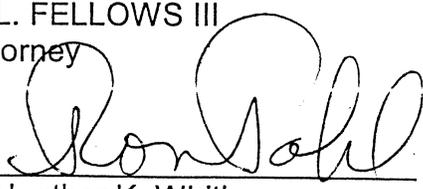
By: 
 Julie Chin, Director

ATTEST:


 Sue Herbers, City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III
 City Attorney

By: 
 Heather K. Whitham,
 Deputy City Attorney

City of Torrance Human Resources Department

Vocational Training Agreement

This Agreement is made between the City of Torrance, a California municipal corporation (City) and Camino Real (Contractor).

THE PARTIES AGREE AS FOLLOWS:

Scope: This Agreement establishes the terms and conditions under which students will receive occupational skills training through the City's grant-funded job training programs. Contractor represents that it is qualified to perform those services.

Term and Amount: This Agreement will become effective on December 10, 2002 (Effective Date) and will end on June 30, 2005 for an amount not to exceed \$ 150,000 (Agreement Total).

Contents of Agreement: This Agreement consists of this signature page, the attached Standard Terms and Conditions, and the exhibits listed below.

- Exhibit A—Example of City Training Voucher
- Exhibit B—Example of City Purchase Order
- Exhibit C—Terms of Training
- Exhibit D—Terms of Payment
- Exhibit E--- Current ETPL

Limitation: This Agreement is not a commitment for referral of students, and constitutes a financial obligation upon submission of an invoice that is issued subsequent to Contractor's receipt of an authorized training voucher and purchase order.

Execution: The person(s) executing this Agreement warrants that they are duly authorized to do so and agree to be bound by this agreement.

CITY OF TORRANCE
a Municipal Corporation

Camino Real

C2002-278

COPY

Dan Walker, Mayor

ATTEST





Julie Chin

Addresses for purpose of giving Notice:

Contractor's Address:

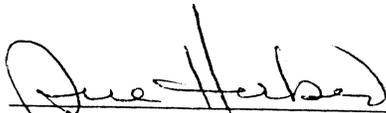
Camino Real

13674 E. Valley Blvd.

La Puente, CA 91746

Fax: (626) 968-9254

ATTEST:



Sue Herbers

City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III

City Attorney

By 

City's Address

Contracts Manager

Human Resources Department

One Civic Plaza, Suite 500

Carson CA, 90745

Fax: (310) 518-8215

Vocational Training Agreement

Terms and Conditions

The following terms and conditions will govern all training and payments made relating to this Agreement and executed training vouchers and purchase orders issued by the City.

1. Availability of Funds

If the City's job training grant funding is suspended, modified, or terminated, in whole or in part, the funding for this Agreement is subject to termination or unilateral modifications.

2. Termination of Agreement

A. Termination by City for Convenience.

1. City may, at any time, terminate the Agreement for City's convenience and without cause.
2. Upon receipt of written notice from City of such termination for City's convenience, Contractor will:
 - a. cease operations as directed by City in the notice;
 - b. take actions necessary, or that City may direct, for the protection and preservation of the work; and
 - c. except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.
3. In case of such termination for City's convenience, Contractor will be entitled to receive payment for work executed; and costs incurred by reason of such termination, along with reasonable overhead and profit on the work not executed.

B. Termination for Cause.

1. If either party fails to perform any term, covenant or condition in this Agreement and that failure continues for 15 calendar days after the non-defaulting party gives the defaulting party written notice of the failure to perform, this Agreement may be terminated for cause; provided, however, that if during the notice period the defaulting party has promptly commenced and continues diligent efforts to remedy the default, the defaulting party will have such additional time as is reasonably necessary to remedy the default.
2. In the event this Agreement is terminated for cause by the default of the Contractor, the City may, at the expense of the Contractor and its surety, complete this Agreement or cause it to be completed. Any check or bond delivered to the City in connection with this Agreement, and the money payable thereon, will be forfeited to and remain the property of the City. All moneys due the Contractor under the terms of this Agreement will be retained by the City, but the retention will not release the Contractor and its surety from liability for the default. Under these circumstances, however, the Contractor and its surety will be credited with the amount of money retained, toward any amount by which the cost of completion exceeds the Agreement Sum and any amount authorized for extra services.
3. Termination for cause will not affect or terminate any of the rights of the City as against the Contractor or its surety then existing, or which

may thereafter accrue because of the default; this provision is in addition to all other rights and remedies available to the City under law.

3. Exclusive Agreement

This is the entire Agreement between Contractor and City.

4. Attorney Fees

If any legal action is necessary to enforce this Agreement, the prevailing party will be entitled to reasonable attorney fees, costs, and expenses in addition to any other relief to which it may be entitled.

5. Financial Assistance

- A. Contractor will assist all students to obtain and make maximum use of financial aid funding and will promptly notify City, in writing, of the amount and disposition of such funds as required by Public Law 105-220.
- B. Expenses payable with Pell Grant funds will not be allowable expenditures under this Agreement.
- C. No Pell funding may be duplicated by the City's job training grant funds.
- D. The Contractor will mandate all students eligible for financial aid to make maximum use of available funding. The Contractor will report and make available to the City, the State, and the Department of Labor and their agents all records relating to students under this Agreement showing Pell applications and Pell grant fund receipt and distribution.
- E. If a student is enrolled into training while Pell eligibility is pending, but is subsequently awarded Pell funding, the Contractor must reimburse to the City the amount of City funds used to underwrite the training.

6. Equal Opportunity

The Contractor assures, with respect to operation of the City's grant funded programs or activities and all Agreements or arrangements to carry out the programs or activities, that it will comply fully with the nondiscrimination and equal opportunity provisions of the

Workforce Investment Act of 1998 (WIA); the Balanced Budget Act of 1997 authorizing Welfare-to-Work activities; the Personal Responsibility and Work Opportunity Reconciliation Act of 1996; the Nontraditional Employment for Women Act of 1991; title VI 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 the Education Amendments of 1972, as amended; and with all applicable requirements imposed by or pursuant to regulations implementing those laws, including but not limited to 29 CFR part 34. The United States has the right to seek judicial enforcement of this assurance.

7. Americans with Disabilities Act (ADA)

The Contractor agrees to comply with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101 et seq.) which prohibits discrimination on the basis of disability, and all applicable federal and State laws and regulations, guidelines, and interpretations issued thereto.

8. Clean Air and Clean Water Act

The Contractor agrees to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (** This applies to contracts, subcontracts, and subgrants of amounts in excess of \$100,000)

9. Child Support Compliance Act

In accordance with the Child Support Compliance Act, the Contractor recognizes and acknowledges:

- The importance of child and family support obligations and shall fully comply with applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosures of information

10. Force Majeure

If any party fails to perform its obligations because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental control, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to

perform, then that party's performance shall be excused for a period equal to the period of such cause for failure to perform.

11. Indemnification

Contractor will indemnify, defend, and hold harmless City, the City Council, each member thereof, present and future, its officers, agents and employees from and against any and all liability, expenses, including defense costs and legal fees, and claims for damages whatsoever, including, but not limited to, those arising from breach of contract, bodily injury, death, personal injury, property damage, loss of use, or property loss however the same may be caused and regardless of the responsibility for negligence. The obligation to indemnify, defend and hold harmless includes, but is not limited to, any liability or expense, including defense costs and legal fees, arising from the negligent acts or omissions, or willful misconduct of Contractor, its officers, employees, agents, subcontractors or Contractors. It is further agreed, Contractor's obligations to indemnify, defend and hold harmless will apply even in the event of concurrent negligence on the part of City, the City Council, each member thereof, present and future, or its officers, agents and employees, except for liability resulting solely from the negligence or willful misconduct of City, its officers, employees or agents. Payment by City is not a condition precedent to enforcement of this indemnity. In the event of any dispute between Contractor and City, as to whether liability arises from the sole negligence of the City or its officers, employees, agents, subcontractors or vendors, Contractor will be obligated to pay for City's defense until such time as a final judgment has been entered adjudicating the City as solely negligent. Contractor will not be entitled in the event of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees, and costs of litigation.

12. Non Liability of City Officers and Employees

No officer or employee of City will be personally liable to Contractor, in case of any default or breach by the City or for any amount that may become due to Contractor.

13. Insurance

- A. Contractor must maintain at its sole expense the following insurance, which will be full coverage not subject to self-insurance provisions:
 1. Automobile Liability, including owned, non-owned and hired vehicles, with at least the following limits of liability:
 - a. Primary Bodily Injury with limits of at least \$500,000 per person, \$1,000,000 per occurrence; and
 - b. Primary Property Damage of at least \$250,000 per occurrence;
or
 - c. Combined single limits of \$1,000,000 per occurrence.

2. General Liability including coverage for premises, products and completed operations, independent Contractors/Contractors, personal injury and contractual obligations with combined single limits of coverage of at least \$1,000,000 per occurrence.
3. Professional liability insurance with limits of at least \$1,000,000 per occurrence.
4. Workers' Compensation with limits as required by the State of California and Employers Liability with limits of at least \$1,000,000.

- B. The insurance provided by Contractor will be primary and non-contributory.
- C. The City, the City Council and each member thereof, members of boards and commissions, every officer, agent, official, employee and volunteer must be named as additional insured under the automobile and general liability policies.
- D. Contractor must provide certificates of insurance and/or endorsements to the City Clerk of the City of Torrance before the commencement of work.
- E. Each insurance policy required by this Paragraph must contain a provision that no termination, cancellation, or change of coverage can be made without thirty days notice to City.

14. Sufficiency of Insurers and Sureties

Insurance or bonds required by this Agreement will be satisfactory only if issued by companies admitted to do business in California, rated "B+" or better in the most recent

edition of Best's Key Rating Guide, and only if they are of a financial category Class VII or better, unless these requirements are waived by the Risk Manager of City ("Risk Manager") due to unique circumstances. In the event the Risk Manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to City, the Contractor agrees that the minimum limits of any insurance policies or performance bonds required by this Agreement may be changed accordingly upon receipt of written notice from the Risk Manager; provided that Contractor will have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of City within 10 days of receipt of notice from the Risk Manager.

15. Integration and Amendment

This Agreement represents the entire understanding of City and Contractor as to those matters contained in it. No prior oral or written understanding will be of any force or effect with respect to the terms of this Agreement. The Agreement may not be modified or altered except in writing signed by both parties.

16. Interpretation

The terms of this Agreement should be construed in accordance with the meaning of the language used and should not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction that might otherwise apply.

17. Severability

If any part of this Agreement is found to be in conflict with applicable laws, that part will be inoperative, null and void insofar as it is in conflict with any applicable laws, but the remainder of the Agreement will remain in full force and effect.

18. Time of Essence

Time is of the essence in the performance of this Agreement.

19. Governing Law, Jurisdiction

This Agreement will be administered and interpreted under the laws of the State of California. Jurisdiction of any litigation arising from the Agreement will be in Los Angeles County, California.

20. Compliance with Statutes and Regulations

Contractor will be knowledgeable of and will comply with all applicable federal, state, county and City statutes, rules, regulations, ordinances, and orders.

21. Exhibits

All exhibits identified in this Agreement are incorporated into the Agreement by this reference.

22. Safety

The Contractor agrees to provide a safe working and/or training environment for students and its employees and to comply fully with the provisions of the Occupational Safety and Health Act of 1970 and the California Occupational Safety and Health Act.

23. Probation and Hold Status

The City may place the Contractor on probationary or hold status when the Contractor either (a) fails to achieve any of the Agreement goals or objectives, (b) is out of compliance with State maintained Employment Training Provider List (ETPL), or (c) is in violation of the terms and conditions of this agreement. If the Contractor, or a course offered by the Contractor, is placed on probationary or hold status, the Contractor will submit a corrective action plan within ten (10) days of the Notice of Vendor Status. The City reserves the right to terminate Agreement(s) of any contractor on probationary or hold status if the Contractor does not submit an acceptable corrective action plan or fails to meet the goals of an approved corrective action plan.

24. Religious, Political and Lobbying Activities

The Contractor agrees not to engage in or permit any religious or political activities concerning the performance of this Agreement. Contractor further agrees to comply with the provisions of the Hatch Act, which limits political activity of employees, and, where applicable, Public Law 101-121, which prohibits influencing Federal financial transactions.

25. Conflict of Interest

The Contractor, including its agents and employees, will comply with all applicable Federal, State, and local laws, regulations, ordinances, and policies and procedures governing conflicts of interest.

26. Citizenship and Alien Status

The Contractor will comply with the Immigration Reform and Control Act of 1986.

27. Confidentiality of Records

The Contractor agrees to maintain the confidentiality of any information regarding program applicants according to the City's policies and procedures.

28. Nepotism

The Contractor will not hire, nor permit the hiring, of any person in a position funded under this Agreement if a member of the person's immediate family is employed in an administrative capacity by the Contractor. For the purposes of this section, the term "immediate family" means spouse, child, mother, father, brother, sister, brother-in-law-, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, and stepchild. The term "administrative capacity" means persons who have overall administrative responsibility for a program, including selection, hiring, or supervisory responsibilities.

29. Drug-Free Workplace

The Contractor agrees to take all necessary and legal steps to ensure a workplace and training environment free of illegal drug use by the Contractor's employees and students.

30. Patent, Copyrights, and Rights in Data

The Contractor will disclose to the City any invention, written product, computer program developed or data assembled as a result of performance of work under this Agreement within seventy four (74) days of invention, development or assembly. The City, State of California, and U.S. Department of Labor, will have the right to patent any invention and copyright any written product or computer program or data generated by Contractor. Upon written request, Contractor will transfer all pertinent information, specifications and right, title and interest to the designated agency.

31. Disputes and Grievances

In case of a dispute between the parties, a joint meeting will be convened to attempt informal resolution. Should informal discussion fail to resolve disputed issues, either party may request formal resolution in accordance with City procedures.

32. Records and Reports

- A. Contractor will cooperate in maintaining daily attendance records for each referred participant and will notify City if a participant exhibits excessive absences or tardiness; behavior problems; deficiencies in basic educational skills; any other problems which may result in an unsuccessful outcome.

- B. Contractor will allow access to records (including computer records and Pell grant records) which relate to charges under this Agreement at reasonable times to City, the United States Department of Labor, the Comptroller General of the United States, the State of California, or any of their duly authorized representatives and will allow such parties to examine and copy all documents, reports, books, papers, and other records pertaining to this Agreement.

- C. All Contractors who apply through the City for inclusion on the ETPL must provide data, as mandated by WIA, on all registered students when required by the City.

- D. The Contractor must maintain records that are sufficient to support all provider data submissions for ETPL purposes and to make these records available for monitoring or audit to all agencies as authorized by the WIA.

33. Monitoring and Audit

- A. Contractor and its staff, agents, officials and any sub-contractors will fully cooperate with all City, State, and federal evaluation, monitoring, and audit activities.

- B. In the event that the allowability of costs incurred under this Agreement are questioned, Contractor agrees to repay to City all costs which are disallowed.

34. Prohibition Against Assignment and Sub-Contracting

This Agreement and all exhibits are binding on the heirs, successors, and assigns of the parties. The Agreement may not be assigned or subcontracted by either City or Contractor without the prior written consent of the other.

35. Waiver of Breach

No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default will impair the right or remedy or be construed as a waiver. A party's consent or approval of any act by the other party requiring the party's consent or approval will not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and will not be a waiver of any other default concerning the same or any other provision of this Agreement.

36. Notice

A. All notices, requests, demands, or other communications under this Agreement will be in writing. Notice will be sufficiently given for all purposes as follows:

1. Personal Delivery. When personally delivered to the recipient: notice is effective on delivery.
2. First Class Mail. When mailed first class to the last address of the recipient known to the party giving notice: notice is effective three mail delivery days after deposit in an United States Postal Service office or mailbox.
3. Certified Mail. When mailed certified mail, return receipt requested: notice is effective on receipt, if delivery is confirmed by a return receipt.
4. Overnight Delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account: notice is effective on delivery, if delivery is confirmed by the delivery service.
5. Facsimile Transmission. When sent by fax to the last fax number of the recipient known to the party giving notice: notice is effective on receipt. Any notice given by fax will be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

B. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified, will be deemed effective as of the first date the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messenger or overnight delivery service.

C. Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this Agreement.

Exhibit C—Terms of Training

1. General Terms

- A. The Contractor will provide training in the vocational courses as listed in the most current published Employment Training Provider List (ETPL) maintained by the State of California for an amount not to exceed the Agreement Total.
- B. Training duration, content, prerequisites, projected hourly wage after program completion, and program cost for each course will be in accordance with the most current published ETPL, which is made a part of this agreement if not physically attached, and in accordance with the course information maintained by the State of California.
- C. Courses offered by the Contractor that have been added to the ETPL and approved for training by the State will be added into this agreement.
- D. The inclusion of Vocational Training programs into this agreement does not constitute a commitment for referral of students, and only constitutes a financial obligation upon presentation of a proper invoice that is issued subsequent to Contractor's receipt of a training voucher and purchase order.
- E. Allowable charges under this agreement will include, but not be limited to registration fees, tuition, books and supplies, tools, professional tests, parking permits, and other related materials. Applicable charges will be billed for during the invoicing process. Participant cost may vary according to actual enrollment.

2. Performance Objectives

- A. Contractor, as a training institution, must maintain an approved status on the State maintained ETPL. To maintain a positive status on the ETPL, Contractor must also collect and report all required performance information to the City or other approving agency.

- B. If the Contractor has been approved by the City and forwarded for inclusion on the ETPL by the City, and is subsequently placed on Probation or Hold status by the State due to low performance or course disapproval, Paragraph 20 Probation and Hold Status listed in the Terms and Conditions section of this agreement will apply. If the Contractor has been placed on Probation or Hold status by the State, and the Contractor has been approved by another Workforce Investment Board, services with the Contractor will be suspended and payments held until the Contractor has cleared the Probation or Hold status with the State.

- C. In addition to the approval standards set by the State for inclusion on the ETPL, the City reserves the right to add additional levels of performance if deemed necessary to ensure the City's State Performance Standards are met.

- D. Regular student progress reports will be sent to the City no less than monthly.

3. Hold and Probation Status

- A. Courses placed on Hold in the ETPL will not be authorized for referral or payment until the course has been cleared of the Hold status.

- B. Courses on probationary status in the ETPL will not be authorized for referral or payment until the course has been cleared of the Probationary status.

Exhibit D—Terms of Payment

1. General Terms

- A. Failure of the Contractor to comply with the requirements of this Exhibit will constitute a material breach of Agreement, upon which the City may cancel, terminate, or suspend this Agreement.
- B. The terms of payment will be applied to students registered and enrolled in an authorized training program during the term of this agreement. Compensation for the courses covered in this agreement will be paid at the published tuition rates as maintained on the ETPL.
- C. Any costs incurred or payments earned by the Contractor over the sums set out in the training voucher and purchase order will be at the sole risk and expense of the Contractor. The City will not pay more than the amount set forth in the authorized training voucher and purchase order.
- D. Providing that the Contractor is not in default under the terms of this Agreement and the referred course is in good standing and meets state requirements, the Contractor and the City agree that the vocational training course(s) listed on the authorized training voucher and purchase order will be paid upon the submission of invoices for two equal benchmark payments: after enrollment and after course completion.
 - 1. Enrollment into training is defined as the completion of course registration activities and Contractor's receipt of an authorized City Training Voucher and a City Purchase Order before the start of the course. Verification of registration must be recorded by the City before payment will be made to the Contractor.
 - 2. Course Completion is defined as satisfactory completion of the training curriculum and attainment of all required competencies. Verification of course completion, in a format pre-approved by the City, must accompany the invoice or the invoice may not be paid. Verification of course completion may include skill attainment certificates, certificates of completion, professional registration, professional licensing, and Associate and Baccalaureate degrees.

2. Invoicing Services

- A. Contractor will submit invoices for payment of services listing the student's name, the course number, the ETPL Identification number, the class title, the unit price, additional charges, the amount, the corresponding benchmark payment and backup documentation. Contractor will also include proof of Pell grant and other financial aid eligibility and status of financial aid application.

- B. The Contractor will prepare and submit an invoice to the City upon student enrollment and the receipt of an authorized training voucher and purchase order. A document confirming registration will serve as proof of enrollment.
- C. The Contractor will prepare and submit an invoice to the City upon student course completion. The accompanying documentation must be submitted to the City with the invoice: a document confirming course completion, in accordance with the definition of course completion above, will serve as proof of completion; time and attendance records, and student's final performance evaluation.
- D. The Contractor will maintain time, attendance records, and progress reports for all students enrolled in training.
- E. Failure to comply with any record keeping or reporting requirements or any other terms included in this Agreement will be grounds for the City to withhold payment against submitted invoices until such compliance is demonstrated.