

Career Catalyst Program Agreement



FOUNDATION *for* CALIFORNIA
COMMUNITY COLLEGES

AGREEMENT No. 00003642

Foundation for California Community Colleges, in an effort to support the Career Catalyst program, which provides life-shaping career opportunities for individuals and recruitment solutions for employers by pairing qualified individuals with organizations for work and job training, shall provide services to the County of San Bernardino, through its Workforce Development Department, a body corporate and politic .

For the purposes of this AGREEMENT the Foundation for California Community Colleges, a California non-profit 501(c)(3) corporation, is referred to as “FOUNDATION” and the County of San Bernardino, through its Workforce Development Department is referred to as “CUSTOMER”. The term “PARTICIPANT” shall refer to the individual participating in the Career Catalyst program. And the term “WORK SITE” shall refer to the agency or business where the PARTICIPANT will be placed, where PARTICIPANT will perform his/her job duties. By signing this AGREEMENT, the Parties acknowledge their acceptance of all the terms and conditions in this AGREEMENT and any exhibits attached hereto (collectively the “AGREEMENT”).

California Workforce Association (“CWA”) issued a Request for Proposals (“RFP”) for payroll services, with the intent to provide a centralized benefit and resources for its members. CWA selected FOUNDATION’s proposal in response to the RFP and now pursuant to the Master Services AGREEMENT, with CWA, all CWA members may enter into a separate AGREEMENT with FOUNDATION to provide services to CUSTOMER without having to undergo a separate procurement process.

The term of this AGREEMENT is August 1, 2020 through August 31, 2021

The amount of this AGREEMENT is \$6,000,000

The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the AGREEMENT.

Exhibit A	Services and Deliverables	Pages 3 – 4
Exhibit A-1	CUSTOMER Guarantees	Pages 5 – 7
Exhibit B	Budget & Payment Terms	Pages 8 – 9
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THE PARTIES HEREBY EXECUTE THIS AGREEMENT.

COUNTY OF SAN BERNARDINO

FOUNDATION FOR CALIFORNIA COMMUNITY
COLLEGES

(Print or type name of corporation, company, contractor, etc.)

By

► Bryan Miller
Bryan Miller (Jul 14, 2020 13:38 PDT)

(Authorized signature - sign in blue ink)

Name

Bryan Miller

(Print or type name of person signing contract)

Title

VP, Communications and Technology

(Print or Type)

Dated:

Jul 14, 2020

Address

1102 Q Street, Suite 4800
Sacramento, CA 95811

FOUNDATION FOR CALIFORNIA COMMUNITY
COLLEGES

(Print or type name of corporation, company, contractor, etc.)

By

► Joseph Quintana

(Authorized signature - sign in blue ink)

Name

Joseph Quintana

(Print or type name of person signing contract)

Title

Chief Operating Officer

(Print or Type)

Dated:

Jul 14, 2020

Address

1102 Q Street, Suite 4800
Sacramento, CA 95811

►

Curt Hagman, Chairman, Board of Supervisors

Dated:

SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Lynna Monell
Clerk of the Board of Supervisors
of the County of San Bernardino

By

Deputy

EXHIBIT A

SERVICES AND DELIVERABLES

AGREEMENT No. 00003642

FOUNDATION shall provide to CUSTOMER the services as set forth below. CUSTOMER agrees to work closely with FOUNDATION staff and its partners in the performance of Services and shall be available to FOUNDATION's staff and partners at all reasonable times. In providing such services to CUSTOMER, FOUNDATION is not exercising any control over the wages, hours, or working conditions of any PARTICIPANT. CUSTOMER agrees and represents that FOUNDATION and CUSTOMER are not acting as a joint employer with respect to the PARTICIPANTS whom FOUNDATION employs during the period of this AGREEMENT.

1. Foundation Responsibilities

- 1.1. FOUNDATION shall assume responsibility, as the employer of record for the PARTICIPANTS:
- 1.2 FOUNDATION shall be responsible for payment of wages, as reported by CUSTOMER, through the FOUNDATION's payroll, including making the appropriate deductions, withholdings, and premium payments under applicable federal, state, and local laws.
- 1.3 FOUNDATION shall be responsible for providing workers' compensation insurance coverage that covers the PARTICIPANTS, as well as processing and defending all workers' compensation claims made by PARTICIPANTS.
- 1.4 FOUNDATION shall be responsible for managing and tracking PARTICIPANT leaves of absence, as may be required by law.
- 1.5 Upon CUSTOMER's written request, FOUNDATION will conduct a background check for PARTICIPANTS requested by CUSTOMER for an additional fee.

2. Services provided by Foundation

Deliverable	Description
On-Boarding Assistance	Virtual and onsite orientation sessions lead by the FOUNDATION. Single point of contact for new hire paperwork. Streamlined and electronic tools to assist with hiring. Maintain personnel records.
Employee Relations Issues	Respond to all day-to-day employee relations issues and employee/supervisor inquiries regarding Policies and Procedures. Provide coaching, guidance, and legal assistance with employee relations issues with supervisors / manager(s), Workforce Development, and Legal staff. Initiate communication with employee to address and resolve issue.

Payroll Services	Manage and maintain the Human Resource Information System (HRIS) and processing of new hires, salary increases, promotions, transfers and terminations for the Program. On-line timekeeping training for students, supervisors, and contract manager(s). Tax documentation and information.
Leave Management	Single point of contact for administrative and medical leaves of absence. Generate paperwork, track time out of the office, and facilitate/manage communication between the employee and supervisor. Liaison between individual and Employment Development Department (EDD) for State Disability Insurance (SDI) and Paid Family Leave (PFL) insurance/payments.
Workers' Compensation Claims	Single point of contact for workers' compensation claims. Generate paperwork, track time out of the office, and facilitate communication between the employee and supervisor. Liaison between employee and insurance carrier for workers' compensation insurance/payments.
Unemployment	Single point of contact for unemployment claims, generate paperwork, and serve as the liaison between employee and EDD for unemployment payments.

3. **Foundation Representative**

Human Resources and Payroll Inquiries:

Leti Shafer, Workforce Development Specialist
Foundation for California Community Colleges
1102 Q Street, Suite 4800
Sacramento, CA 95811
Phone: 916-498-6749
Fax: 916-325-0844
lshafer@foundationccc.org

EXHIBIT A-1

CUSTOMER GUARANTEES

1. CUSTOMER Responsibilities

1.1 CUSTOMER shall have the responsibility for the day-to-day control and supervision of PARTICIPANTS and must provide PARTICIPANT with supervision, training, and work assignments in accordance with the WORK SITE request and job description.

1.2 CUSTOMER shall allow for monitoring visits by representatives of the FOUNDATION and shall ensure that WORK SITES will allow for monitoring visits by representatives of the FOUNDATION should the FOUNDATION elect to perform an inspection.

1.3 CUSTOMER will notify FOUNDATION if any position is subject to any state, federal or local minimum or prevailing wage requirements, or subject to the terms of a collective bargaining AGREEMENT.

1.4 If PARTICIPANTS will be working at WORK SITES not under the direction and control of CUSTOMER, CUSTOMER shall enter into a signed “Work Site AGREEMENT” with the WORK SITE prior to PARTICIPANT beginning his or her work experience. CUSTOMER may use an approved Work Site AGREEMENT that is approved by both parties. FOUNDATION in its sole discretion may deny placement of PARTICIPANTS at any WORK SITE, if FOUNDATION deems the WORK SITE to be unsafe or non-compliant with State, Local, or Federal law.

1.5 Without the prior written AGREEMENT of FOUNDATION, CUSTOMER will not entrust PARTICIPANTS with the care of unattended premises, or unsupervised custody or control of cash, credit cards, valuables, or other similar property.

1.6 CUSTOMER shall ensure PARTICIPANTS receive meal and rest breaks in compliance with both California Law and the FOUNDATION’s Policy and Procedures manual. CUSTOMER agrees to accurately track and provide to FOUNDATION a time record for all hours worked by each PARTICIPANT on a bi-weekly basis. The time record shall include all of the PARTICIPANT’s start and end times, as well as meal period and rest breaks. CUSTOMER will be responsible for ensuring PARTICIPANT’s enter and approve accurate timesheets. Billed rates will be increased to reflect overtime hours worked, waiting time penalties, and meal period premiums according to state or local law.

1.6.1 If CUSTOMER submits a request to off-board a PARTICIPANT, CUSTOMER shall notify FOUNDATION at least 4 days in advance of the requested last day of work (includes when PARTICIPANT completes his or her work experience); CUSTOMER shall also notify FOUNDATION immediately in the event a PARTICIPANT voluntarily quits his or her work experience. If CUSTOMER fails to notify FOUNDATION in accordance with this term, CUSTOMER shall be responsible for compensating FOUNDATION for payments made to PARTICIPANT for the costs of waiting time penalties, per Labor Code section 203.

1.7 CUSTOMER will ensure that PARTICIPANTS who are under the age of 18 do not exceed 8 hours per day or 40 hours per week. If PARTICIPANTS over the age of 18 do exceed 8 hours per day or 40 hours per week, CUSTOMER will be responsible for payment of overtime to the

PARTICIPANT. CUSTOMER will ensure that no PARTICIPANT exceeds 485 hours total. **This number cannot exceed 1000 hours per PARTICIPANT per fiscal (July- June) year**, unless classified as a Student Assistant with CUSTOMER and FOUNDATION approval.

1.8 CUSTOMER shall provide a detailed job description prior to the start date for each PARTICIPANT. This will allow the FOUNDATION to apply an accurate Worker's Compensation Rate to be billed to CUSTOMER.

1.9 CUSTOMER shall collect and maintain a copy of each WORK SITE's Injury and Illness and Prevention Program (IIPP), as appropriate, and shall provide a copy to the FOUNDATION upon request.

1.10 CUSTOMER shall collect and maintain a copy of each WORK SITE's Certificate of Insurance (COI) for each insurance policy that WORK SITE is required to maintain, pursuant to the WORK SITE Agreement between CUSTOMER and WORK SITE, and shall provide a copy to the FOUNDATION upon request.

1.11 CUSTOMER agrees that PARTICIPANT is prohibited from operating any motor vehicle or heavy equipment at any time as part of his or her work or training activities, unless and until CUSTOMER secures FOUNDATION's approval and contract is revised to incorporate FOUNDATION's Driving Standard Policy.

1.12 CUSTOMER shall immediately notify FOUNDATION if a case of COVID-19 is detected at the CUSTOMER's worksite, which includes but is not limited to an instance where a PARTICIPANT or CUSTOMER staff tests positive for COVID-19, or a third-party that closely interacts with PARTICIPANT or CUSTOMER staff tests positive for COVID-19.

2. Compliance with Federal, State, and Local Laws

2.1 CUSTOMER must provide all legally required documents prior to PARTICIPANTS start date including, but not limited to: PARTICIPANT Form I-9s and work permits for PARTICIPANTS under the age of 18.

2.2 CUSTOMER shall certify that WORK SITE provides a drug-free workplace, required by the California Drug-Free Workplace Act of 1990 (Government Code section 8350 et seq.).

2.3 CUSTOMER and WORK SITE shall comply with all applicable federal, state and local laws and regulations relating to a safe and accessible work environment, including but not limited to, federal and state Occupational Safety and Health Administration ("OSHA") laws and regulations, including the recording of workplace injuries on CUSTOMER's OSHA 300 logs.

2.4 CUSTOMER and WORK SITE shall comply with the requirements of the Fair Labor Standards Act, the California Labor Code, the California Industrial Wage Orders, Title VII of the Civil Rights Act of 1964, the Fair Employment and Housing Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and all other federal, state, and local laws and regulations governing the hiring or employment of PARTICIPANT.

2.5 CUSTOMER and WORK SITE shall comply with all applicable federal, state, and local orders, advisories, and guidelines on COVID-19 related workplace restrictions and notification

obligations, including but not limited to those from the Center for Disease Control and Prevention (CDC), the California Department of Public Health (CDPH), California Division of Occupational Safety and Health of California, local county, or any other applicable government entity.

3. Worker's Compensation and Employment Claims

3.1 CUSTOMER shall immediately notify FOUNDATION of any injury and/or Workers' Compensation Claims related to a PARTICIPANT.

3.2 CUSTOMER shall promptly report to FOUNDATION any claims of harassment, discrimination, and/or claims of any violation of law governing the PARTICIPANT's employment, including allegations or reports of any irregularities or discrepancies by PARTICIPANT.

3.3 CUSTOMER shall notify the FOUNDATION if a PARTICIPANT will be allowed to operate any motor vehicle or heavy equipment at any time as part of his/her work/training activities. CUSTOMER must secure FOUNDATION's written approval prior to PARTICIPANT's use of motor vehicles or heavy equipment.

EXHIBIT B

BUDGET & PAYMENT TERMS

1. Compensation

The total fee to be paid to FOUNDATION by CUSTOMER for the Services shall not exceed \$6,000,000, including applicable taxes. Services will be billed based on actual costs of Services provided. CUSTOMER will be responsible for all costs incurred by PARTICIPANTS under this AGREEMENT. If PARTICIPANTS incur costs that exceed the contract value, CUSTOMER is responsible for those costs. These costs include any cost the FOUNDATION is obligated to pay PARTICIPANTS under State, Local, or Federal law.

2. Invoicing and Payment

- A. For Services satisfactorily rendered, and upon receipt and approval of the invoices, CUSTOMER agrees to compensate FOUNDATION for actual expenditures incurred in accordance with the rates specified herein.
- B. Itemized invoices shall be submitted via email on a bi-weekly basis to:

San Bernardino County Workforce
Amber Spoon
Amber.spoon@wdd.sbcounty.gov
Cc Trent.Wiebe@wdd.sbcounty.gov
Fiscal Unit
290 N D Street Suite 600
San Bernardino, CA 92415

3. Billing Rate

CUSTOMER will be invoiced biweekly and will pay FOUNDATION based upon a specified billing rate, which is composed of the following:

- A. CUSTOMER is billed for the PARTICIPANT's hourly rate, including any overtime or premium payments owed to the PARTICIPANT plus employer payroll taxes (Reference budget). The actual percentage for employer tax is determined based upon assigned workers compensation codes;
- B. CUSTOMER is billed a discounted indirect rate of 15% of the total costs described in Section 2A above, to cover administrative and payroll fees associated with facilitating the Services, including but not limited to, serving as the employer of record.
- C. CUSTOMER is billed a \$100 onboarding fee per PARTICIPANT, which is invoiced at the time of hire; the \$100 onboarding fee per PARTICIPANT is included in the not to exceed compensation amount set forth in Section 1 ("Compensation") above.
- D. Depending on the location and size of the project members will be billed for additional travel expenses, time, and materials needed to train staff, onboard PARTICIPANT's, and perform WORKSITE visits; and

- E. CUSTOMER is responsible for compensating the FOUNDATION for any Services performed or employee benefit cost incurred by a PARTICIPANT that are not listed in Exhibit A of the AGREEMENT but are required under local, State and Federal law. Billed rates will be increased to reflect additional costs incurred due to overtime hours worked, payment of waiting time penalties, meal period premiums, and other statutory penalties imposed pursuant to applicable local, state, and federal laws.
- F. CUSTOMER is responsible for reimbursing the FOUNDATION for the direct cost of criminal history background checks, live scans, or any other pre-employment screening that is requested by CUSTOMER.

EXHIBIT C

SPECIAL TERMS

1. Term, Termination, Stop Work Notice

- 1.1 Term. The period of this AGREEMENT is from the August 1, 2020 to August 31, 2021 (“Term”).
- 1.2 Termination for Convenience. Either party shall have the right to terminate this AGREEMENT for any reason or no reason, without penalty, at any time by providing the other party with written notice of termination at least thirty (30) calendar days in advance.
- 1.3 Termination for Cause. Either party shall have the right to terminate this AGREEMENT, without penalty, immediately should the other party be found to be in material breach of this AGREEMENT.
- 1.4 Procedures at Termination. Either party must cease or reduce work immediately upon receiving the notice of termination or as required by the written notice and take all steps possible to mitigate losses. CUSTOMER shall be liable to FOUNDATION for all wages and costs authorized under this AGREEMENT up until the effective date of termination and shall make payment to FOUNDATION upon receipt of a final invoice.

2. Insurance and Indemnification

2.1 Insurances required by this Agreement shall contain a thirty (30) day notice of cancellation provision. CUSTOMER shall transmit all certificates of insurance, including the additional insured endorsement, to the FOUNDATION, within 15 days of CUSTOMER’s execution of this Agreement. All insurance required to be carried by CUSTOMER and/or Indemnitor shall be primary, and not contributory, to any insurance carried by FOUNDATION. Any failure of FOUNDATION to require Certificates of Insurance and Additional Insured endorsements shall not operate as a waiver of these requirements.

2.2 Insurance. FOUNDATION, at its sole cost and expense, will insure its activities in connection with this AGREEMENT, and will obtain, keep in force, and maintain insurance as listed below:

- Commercial general liability insurance with a combined single limit of no less than \$1 million per occurrence and \$2 million aggregate;
- Business automobile liability insurance for all owned, scheduled, or hired automobiles with a combined single limit of no less than \$1 million per accident; and
- Workers’ compensation as required under the Workers’ Compensation and Safety Act of the State of California, as amended from time to time.
- Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$1,000,000 covering claims involving privacy violations, information theft, damage to or destruction of electronic information, extortion and network security. The policy shall protect the involved CUSTOMER entities and cover breach response cost as well as regulatory fines and fees.

- **Abuse/Molestation Insurance** – The FOUNDATION shall have abuse or molestation insurance providing coverage for all employees for the actual or threatened abuse or molestation by anyone of any person in the care, custody, or control of any insured, including negligent employment, investigation and supervision. The policy shall provide coverage for both defense and indemnity with liability limits of not less than one million dollars (\$1,000,000) with a two million dollars (\$2,000,000) aggregate limit.

Insurances required by this AGREEMENT shall contain a thirty (30) day notice of cancellation provision. Any failure of either party to require Certificates of Insurance shall not operate as a waiver of these requirements.

- A. Additional Insured.** All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability policies, shall contain endorsements naming the CUSTOMER and its officers, employees, agents and volunteers as additional insured's with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the CUSTOMER to vicarious liability but shall allow coverage for the CUSTOMER to the full extent provided by the policy. The scope of such additional insured coverage and the coverage limits to the additional insured shall be equal to the scope of coverage and the coverage limits provided to the FOUNDATION.
- B. Waiver of Subrogation Rights.** The FOUNDATION shall require the carriers of required coverages to waive all rights of subrogation against the CUSTOMER, its officers, employees, agents, and volunteers. All general or auto liability insurance coverage provided shall not prohibit the FOUNDATION and FOUNDATION's employees or agents from waiving the right of subrogation prior to a loss or claim. The FOUNDATION hereby waives all rights of subrogation against the CUSTOMER.
- C. Policies Primary and Non-Contributory.** All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the CUSTOMER.
- D. Severability of Interests.** The FOUNDATION agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the FOUNDATION and the CUSTOMER or between the CUSTOMER and any other insured or additional insured under the policy.
- E. Proof of Coverage.** The FOUNDATION shall furnish Certificates of Insurance to the CUSTOMER Department administering the contract evidencing the insurance coverage, including endorsements, as required, prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and FOUNDATION shall maintain such insurance from the time FOUNDATION commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, the FOUNDATION shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

Prior to start of Contract, a copy of above certificates of insurance should be sent to:

San Bernardino County
Workforce Development Department
290 North D St., Suite 600
San Bernardino, CA 92415-0046

F. Acceptability of Insurance Carrier. Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum “Best” Insurance Guide rating of “A- VII”.

G. Deductibles and Self-Insured Retention. Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to Risk Management.

H. Failure to Procure Coverage. In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the CUSTOMER has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the CUSTOMER will be promptly reimbursed by the FOUNDATION or CUSTOMER payments to the FOUNDATION will be reduced to pay for CUSTOMER purchased insurance.

I. Insurance Review

1. Insurance requirements are subject to periodic review by the CUSTOMER. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the CUSTOMER. In addition, if the Risk Management Department determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the CUSTOMER, inflation, or any other item reasonably related to the CUSTOMER’s risk.
2. Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. FOUNDATION agrees to execute any such amendment within thirty (30) days of receipt.
3. Any failure, actual or alleged, on the part of the CUSTOMER to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the CUSTOMER.

J. Insurance Specifications. The FOUNDATION agrees to provide insurance set forth in accordance with the requirements herein. If the FOUNDATION uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the FOUNDATION agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the contract services. Without in anyway affecting the indemnity herein provided and in

addition thereto, the FOUNDATION shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

1. Workers' Compensation/Employers Liability.

- a. A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the FOUNDATION and all risks to such persons under this contract.
- b. If FOUNDATION has no employees, it may certify or warrant to the CUSTOMER that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the CUSTOMER's Director of Risk Management.
- c. With respect to FOUNDATION's that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

2. Commercial/General Liability Insurance. The FOUNDATION shall carry General Liability Insurance covering all operations performed by or on behalf of the FOUNDATION providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a. Premises operations and mobile equipment.
- b. Products and completed operations.
- c. Broad form property damage (including completed operations).
- d. Explosion, collapse and underground hazards.
- e. Personal injury.
- f. Contractual liability.
- g. \$2,000,000 general aggregate limit.

3. Automobile Liability Insurance. Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence. If the FOUNDATION is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence. If the FOUNDATION owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

4. Umbrella Liability Insurance. An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary

coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

2.3 Indemnification

2.3.1 FOUNDATION agrees to indemnify, defend (with counsel reasonably approved by CUSTOMER) and hold harmless the CUSTOMER and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of the performance of the services under this AGREEMENT that are caused by the FOUNDATION's, its officers, employees, agents, subcontractors and representatives' wrongful acts, errors or omissions.

2.3.2 CUSTOMER agrees to indemnify, defend (with counsel reasonably approved by Foundation) and hold harmless the FOUNDATION, and its officers, employees, agents, and volunteers against any costs, expenses, claims, suits, judgments, loss or damage (including reasonable attorneys' fees) arising from its performance of its responsibilities, duties and compliance obligations under this AGREEMENT that is caused by CUSTOMER, its officers, employees, agents, subcontractors and representatives' wrongful acts, errors or omissions.

2.4 Complaint and Grievance Procedures

2.4.1 Procedure. FOUNDATION shall develop and maintain procedures to be used for resolving complaints that the FOUNDATION receives regarding terms and conditions of the participant's training or other applicable services and/or complaints/grievances arising in connections with CUSTOMER programs and activities. These procedures must be substantially the same as those set forth in the Program Complaint and Grievance Procedures form developed by CUSTOMER, which will be provided to the FOUNDATION. A minimum of two staff members will be required to be involved with the complaint and grievance process.

2.4.2 Complaint. FOUNDATION shall provide each participant with a copy of its internal Participant Complaint and Grievance Procedures upon enrollment into the program. The FOUNDATION shall maintain, on file, a copy signed by the PARTICIPANT, with the second signed copy given to the PARTICIPANT.

2.4.3 Retaliation. FOUNDATION shall not discriminate or retaliate against any person, or deny to any person a benefit because such person has filed any complaint, instituted or caused to be instituted any proceeding, has testified, or is about to testify in any investigation, or has provided information or assisted in any investigation.

2.4.4 Equal Opportunities. All Discrimination Complaints will be handled as provided for in the Equal Opportunity Requirements section.

2.4.5 Termination Rights. Nothing in this section shall restrict, modify, or otherwise alter the right of the CUSTOMER to terminate this Contract as provided herein..

2.5 Equal Opportunity Requirements

- 2.5.1 Requirements. FOUNDATION agrees to comply with the provisions of the Equal Employment Opportunity Program of San Bernardino County and rules and regulations adopted pursuant thereto: Executive Order 11246 (as amended by Executive Orders 11375, 11625, 12138, 12432, and 12250); Title VII of the Civil Rights Act of 1964; the California Fair Employment and Housing Act; and other applicable Federal, state and CUSTOMER laws, regulations and policies, including laws and regulations hereafter enacted. In addition to the above laws, the FOUNDATION must comply fully with the nondiscrimination and equal opportunity provisions of the following laws: 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; Section 188 of the Workforce Innovation and Opportunity Act; and all other regulations implementing the laws listed above
- 2.5.2 Compliance. FOUNDATION shall not unlawfully discriminate against any employee, applicant for employment, or service recipient on the basis of race, color, national origin or ancestry, religion, sex, marital status, age, political affiliation or belief, or disability. The Equal Opportunity is the Law notice, which explains the nondiscrimination and equal opportunity provisions of WIOA, shall be provided to each participant. All complaints that allege discrimination on the bases listed above will be referred to the WDD Equal Opportunity Officer for action.

2.6 Additional Requirements

2.6.1 Availability of Records.

2.6.1.1 All records pertaining to service delivery and all fiscal, statistical, and management books and records shall be available for examination and audit by CUSTOMER, Federal, and State representatives. Program data shall be retained locally and made available upon request or turned over to the CUSTOMER. If said records are not made available at the scheduled monitoring visit the FOUNDATION may, at CUSTOMER's option, be required to reimburse CUSTOMER for expenses incurred due to required rescheduling of monitoring visit(s). Such reimbursement will not exceed fifty dollars (\$50) per hour (including travel time) and be deducted from the following month's claim for reimbursement.

2.6.1.2 Records of the FOUNDATION that do not pertain to the program shall not be subject to audit unless provided for in another AGREEMENT.

2.6.1.3 FOUNDATION shall provide all reasonable facilities and assistance for the safety and convenience of CUSTOMER's representative in the performance of their duties. All inspections and evaluations shall be performed in such a manner as to not unduly delay the work of the FOUNDATION.

2.6.2 Maintenance of Records.

2.6.2.1 Records, in their original form, shall be maintained on file to comply with requirements prescribed by WIOA and/or the CUSTOMER with respect to all matters covered by this Contract. Such records shall be retained for a period of five years after termination of this Contract, and/or until all other pending matters are completed. "Pending Matters" include, but are not limited to, audit, litigation, investigation, or other actions involving records. If this is the case, the

FOUNDATION will retain the records until the resolution of such audit or litigation is completed.

2.6.2.2 Participant records to be maintained by the FOUNDATION shall include, but are not limited, to the following documents: orientation/case notes, complaint and grievance procedures, on-boarding activities, any employer related issues, payroll services, leave management, any workers' Compensation claims, unemployment paperwork, if applicable, etc.

2.7 Prohibition of Activities.

2.7.1 The FOUNDATION will assure that no funds under this Contract shall be used to assist, promote, or deter union organizing activities.

2.7.2 No funds provided under WIOA shall be used or proposed for use to encourage or induce the relocation of an establishment, or part thereof, which results in a loss of employment for any employee of such establishment at the original location.

2.7.3 None of the funds, materials, property or services provided directly or indirectly under this Contract shall be used for, or to promote, any partisan or non-partisan political activity, or to support or defeat any pending legislation or administrative legislation.

2.7.4 The FOUNDATION is prohibited from using funds under this Contract for the purpose of instituting legal proceedings or legal disputes against the CUSTOMER or its official representatives.

2.8 Patents, Inventions, and Copyrights. If any project produces patentable items, patent rights, and/or discovery or inventions in the course of work under a Federal grant or AGREEMENT, the FOUNDATION shall report the fact promptly and fully to the CUSTOMER. The CUSTOMER, or the State, or the DOL representative shall determine how the rights on the invention or discovery, including licensing, reproduction, publishing, utilization and royalty will be administered in order to protect the public interest consistent with the government policy. The CUSTOMER shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, copyright or patent, now and hereafter, all reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials or properties developed under this Contract, including those covered by copyright. The CUSTOMER reserves the right to authorize others to use or reproduce such material.

2.9 Disallowed Costs. If the CUSTOMER determines in its sole and absolute discretion, through monitoring, audit, investigation, or review of fiscal records, that any disbursements made under this Contract are "disallowed costs," i.e. costs that are not allowable per Office of Management and Budget Circular A-87 (as codified at 2 CFR part 225), the FOUNDATION shall be notified and given the opportunity to justify the questioned costs prior to the CUSTOMER's final determination of disallowed costs. If the CUSTOMER, in its sole and absolute discretion, determines that the costs are disallowed, reimbursement to the CUSTOMER of said amounts must be made within 45 days after official notification from the CUSTOMER. If said reimbursement is not made within the stated time, the CUSTOMER may withhold said amount from non-Federal funds that may be due or become due to the FOUNDATION. The resolution shall be executed in accordance with the Department's Procedures on Audit Resolution.

- 2.10 Independent Capacity. In the performance of the Contract, the FOUNDATION, its agents and employees, and any subcontractors, shall act in an independent capacity and not as officers, employees, or agents of the CUSTOMER.
- 2.11 Contract Assignability. Without the prior written consent of the CUSTOMER, the FOUNDATION is prohibited from assigning or transferring the proprietorship of this contract to any other party either in whole or part.
- 2.12 Contract Amendments, Extensions and Waivers. The FOUNDATION agrees that any alterations, variations, modifications, or waivers of provisions of the Contract shall be valid only when they have been reduced to writing, duly signed and attached to the original of the Contract, and approved by the required persons and organizations. WDD retains the option to amend the Contract, as necessary, in accordance with requirements contained in any future Federal or State legislation, regulations, or policy. Subject to availability of continued funding and the FOUNDATION meeting all performance and administrative requirements, the Contract may be extended for a period up to two additional one-year terms. No waiver of any provision of this Contract shall be deemed, for any purpose, to be a waiver of any other provisions, or to be a continuing or subsequent waiver of the same provision.
- 2.13 Lawsuits. The FOUNDATION understands and agrees that any and all legal fees or costs associated with lawsuits against the CUSTOMER concerning this Contract shall be the FOUNDATION's sole expense and shall not be charged as a cost under this Contract. In the event of any contract dispute hereunder, each party to this contract shall bear its own attorney's fees and costs regardless of who prevails in the outcome of the dispute.
- 2.14 Conflict of Interest. FOUNDATION shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the CUSTOMER. FOUNDATION shall make a reasonable effort to prevent employees, consultants, or members of governing bodies from using their positions for purposes that are, or give the appearance of being; motivated by a desire for private gain for themselves or others such as those with whom they have family, business, or other ties.

Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and State law, including Section 23-602 (Code of Conduct) of Chapter 23-600 of the CDSS Manual of Policies and Procedures. In the event that the CUSTOMER determines that a conflict of interest situation exists, any increase in costs associated with the conflict of interest situation may be disallowed by CUSTOMER and such conflict may constitute grounds for termination of the Contract.

This provision shall not be construed to prohibit employment of persons with whom FOUNDATION's officers, employees, or agents have family, business or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

FOUNDATION is subject to the provisions of California Government Code Sections 1090, 1091.2, 1126, 87100, and any other conflict of interest code applicable to contracts with the CUSTOMER. Pursuant to Section 1091.2 of the California Government Code and Policy No. 1 of the Workforce Development Board, if a contract, subcontract or purchase order will directly or indirectly involve a Workforce Development Board Member, FOUNDATION must disclose the nature of the Workforce Development Board Member's relationship, including that of any family member, with

the FOUNDATION on the “Conflict of Interest Full Disclosure Certification” which shall be submitted with its Proposal but no later than Contract award.

- 2.15 Nepotism. No individual, related by blood, adoption or marriage to any FOUNDATION executive, person in an administrative capacity, employee or volunteer, shall be allowed to enroll for services or training provided by the Service The FOUNDATION.

2.16 Confidentiality

2.16.1 Except as may be required by California or Federal law to be disclosed as a public record, the FOUNDATION shall require its officers, agents, employees, volunteers and any subcontractor to comply with the provisions of WIOA Section 116 (i)(3) and Section 444 of the General Education Provisions Act (20 U.S.C. 1232g) to assure that education records (or personally identifiable information contained therein) will be confidential and will not be open to examination for any person not directly connected with the administration, performance, compliance, monitoring or auditing of the services provided pursuant to this contract.

2.16.2 No person will publish or disclose, or use or permit, or cause to be published or disclosed or used, any confidential information pertaining to any applicant or recipient of services under this Contract.

2.16.3 The FOUNDATION agrees to inform all subcontractors, consultants, employees, agents and partners of the above provisions, and that any person knowingly and/or intentionally violating the provisions of this article is guilty of a misdemeanor.

2.17 Compliance with Laws and Regulations

The FOUNDATION warrants and certifies that, in the performance of this Contract, it shall comply with all applicable laws, rules and regulations of the United States, the State of California, and San Bernardino County. The FOUNDATION further warrants and certifies that it shall comply with any new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this Contract.

2.18 Environmental Regulations

2.18.1 EPA Regulations. If the amount awarded to the FOUNDATION under the Contract exceeds one hundred thousand dollars (\$100,000), the FOUNDATION agrees to comply with Section 306 of the Clean Air Act (42 USC 1857 h), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738 and Environmental Protection Agency regulations (40 CFR, Part 15).

2.18.2 State Energy Conservation Clause. The FOUNDATION shall observe the mandatory standards and policies relating to energy efficiency in the State Energy Conservation Plan (Title 204, Division 2, Chapter 4, California Code of Regulations).

- 2.19 Recycling. The FOUNDATION shall use recycled products, whenever practicable, in fulfilling the terms of the Contract. Recycled printed products shall include a symbol identifying the recycled material.

- 2.20 Notification. In the event of a problem or potential problem that will impact the quality or quantity of work or the level of performance under this Contract, notification will be made within one (1) business day, in writing, and by telephone.
- 2.21 Report on Fraud and Abuse. The FOUNDATION shall establish and implement appropriate internal management procedures to prevent fraud, abuse and criminal activity. Further, the FOUNDATION shall establish a reporting process to ensure that the CUSTOMER is notified immediately of any allegation of WIOA-related fraud, abuse or criminal activity, or any suspected or proven fraud, abuse or criminal acts committed by staff or participants. If the allegation is of an emergency and/or fiscal nature, it shall be reported to the CUSTOMER by telephone and, immediately thereafter, a written report shall be submitted. Proof of such report will be maintained in the FOUNDATION's file. Report on fraud and abuse shall be executed in accordance with WDD Administrative Services Manual, Chapter 8. In addition, theft or embezzlement from employment and training funds under WIOA shall be subject to a fine or imprisonment, pursuant to §665 of Title 18, United States Code.

EXHIBIT D

NOTICES

Notices

All notices and other communications required or permitted to be given under this AGREEMENT, including but not limited to any notice of change of address, must be directed to the following individuals. Further, all notices shall be in writing and shall be emailed, personally delivered, certified mail, postage prepaid and return receipt requested, or by overnight courier service. Notice shall be deemed effective on the date emailed, personally delivered, or if mailed, five (5) days after deposit of the same in the custody of the United States Postal Service or overnight courier service.

FOUNDATION:

PROGRAM DIRECTOR (All Programmatic Issues):

Tim Aldinger
Director, Workforce Development
Foundation for California Community Colleges
1102 Q Street, Suite 4800
Sacramento, CA 95811
916-491-4499
taldinger@foundationccc.org

CONTRACTS (Contracts Issues Only, including but not limited to Contract Notices):

Contracts Department
Foundation for California Community Colleges
1102 Q Street, Suite 4800
Sacramento, CA 95811
contracts@foundationccc.org

HUMAN RESOURCES AND PAYROLL INQUIRIES:

Leti Shafer, Workforce Development Specialist
Foundation for California Community Colleges
1102 Q Street, Suite 4800
Sacramento, CA 95811
Phone: 916-498-6749
Fax: 916-325-0844

WORKERS COMPENSATION RELATED INQUIRIES:

Mariya Ivanova, Human Resources Coordinator
Foundation for California Community Colleges
1102 Q Street, Suite 4800
Sacramento, CA 95811
Phone: 916-491-4463
hr@foundationccc.org

CUSTOMER:

Sandra Harmsen, Interim Director
San Bernardino County Workforce Development Department
290 N D Street Suite 600
San Bernardino, CA 92415
909-387-9886
sandy.harmsen@wdd.sbcounty.gov

EXHIBIT E

GENERAL TERMS

1. General Terms

- 1.1 Captions and Interpretation. Paragraph headings in this AGREEMENT are used solely for convenience and shall be wholly disregarded in the construction of this AGREEMENT. Paragraph headings shall not be deemed to define, limit or extend the scope or intent of the paragraphs to which they appertain.
- 1.2 Assignment and Delegation. This AGREEMENT may not be assigned or otherwise transferred by either party without the prior written consent of the other party; however, either party will have the right to assign its rights and obligations under this AGREEMENT in connection with a merger, acquisition, or sale transfer of substantially all of its assets. Any assignment not in accordance with this paragraph is void.
- 1.3 Anti-lobbying. FOUNDATION shall not use any part of the funds rendered for Services to directly or indirectly pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a political candidate for public office or a Member of Congress, a jurisdiction, or an official of any government, or to favor, adopt, or oppose, by vote or otherwise, any legislation.
- 1.4 Non-Discrimination. FOUNDATION shall not discriminate in the provision of services, benefits, employment, facilities or otherwise because of race, color, ancestry, religion, creed, national origin, sex, age, sexual orientation, physical or mental disability, medical condition, marital status, denial of family care leave or on the basis of any other protected category as provided by federal, state and/or local laws. CUSTOMER shall comply with the provisions of the Fair Employment and Housing Act (California Government Code §12990(a)-(f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, §7285 et. seq.)
- 1.5 Debarment and/or Suspension. CUSTOMER shall comply with Executive Order 12549, Debarment and Suspension. CUSTOMER represents and warrants that CUSTOMER is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency or any California state department or agency.
- 1.6 Entire AGREEMENT. This AGREEMENT constitutes the entire, complete, final and exclusive AGREEMENT between the parties with respect to the subject matter hereof and supersedes and replaces any and all prior and contemporaneous communications between the parties regarding such subject matter. Any terms and conditions which are additional to or different from the terms and conditions of this AGREEMENT are hereby deemed rejected by FOUNDATION and shall not be of any effect or in any way binding upon FOUNDATION. To the extent that the terms and conditions of this AGREEMENT conflict with, or are in any way inconsistent with, the terms and conditions of any exhibit hereto, the terms and conditions of this AGREEMENT will prevail.

- 1.7 Modification of AGREEMENT. This AGREEMENT may be modified only by a written AGREEMENT dated subsequent to this AGREEMENT and signed by authorized representatives of each party. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.
- 1.8 Law to Govern; Venue. This AGREEMENT is made under and will be governed by and construed in accordance with the laws of the State of California. Any litigation resulting from a dispute or claim arising under or relating to this AGREEMENT shall be resolved in a state or federal court in San Bernardino County, California. The parties specifically submit to the personal jurisdiction and subject matter jurisdiction of the state and federal courts located in San Bernardino County, California. The prevailing party in any action relating to breach or enforcement of this AGREEMENT shall be entitled to their reasonable attorneys' fees and costs.
- 1.9 Time is of the Essence. Time is of the essence with respect to all provisions of this AGREEMENT that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this AGREEMENT.
- 1.10 Construction of AGREEMENT. Both parties have participated in the negotiation and drafting of this AGREEMENT. Therefore, the terms and conditions of this AGREEMENT shall not be construed against either party as the drafting party.
- 1.11 Confidentiality. CUSTOMER shall not, directly or indirectly, use, make available, sell, disclose or otherwise communicate to any third party, other than in CUSTOMER's assigned duties and for the benefit of FOUNDATION, any of FOUNDATION's Confidential Information, either during or after CUSTOMER's relationship with FOUNDATION. Subject to applicable federal, state and local law, including but not limited to the Richard McKee Transparency Act of 2011, Confidential Information is to be broadly defined, and includes but may not be limited to all information that has or could have commercial value or other utility in the business in which FOUNDATION is engaged or contemplates engaging, and all information of which the unauthorized disclosure could be detrimental to the interests of FOUNDATION, whether or not such information is identified as Confidential Information by FOUNDATION. This paragraph shall survive the expiration or early termination of this AGREEMENT.
- 1.12 Execution of this AGREEMENT. The Parties agree that this AGREEMENT may be executed in counterparts, each of which shall be deemed to be an original, but both of which together shall constitute one and the same instrument, and that a photocopy or facsimile may serve as an original. If this AGREEMENT is executed in counterparts, no signatory hereto shall be bound until both the parties have fully executed a counterpart of this AGREEMENT. The Parties shall be entitled to sign and transmit an electronic signature of this AGREEMENT (whether by facsimile, PDF, or other email transmission), which signature shall be binding on the party whose name is contained therein. Each Party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed AGREEMENT upon request.
- 1.13 Authority to Bind. The parties each represent and warrant that the signatories below are authorized to sign this AGREEMENT on behalf of themselves or the party on whose behalf they execute this AGREEMENT.
- 1.14 Severability. If any part of this AGREEMENT is found invalid or unenforceable, that part will be amended to achieve, as nearly as possible, the same economic effect as the original provision and the remainder of this AGREEMENT will remain in full force and effect.

- 1.15 Non-waiver. The failure of either FOUNDATION or CUSTOMER, whether purposeful or otherwise, to exercise in any instance any right, power or privilege (including but not limited to waiver) under this AGREEMENT or under law of this AGREEMENT shall not constitute a waiver of any other right, power or privilege, nor of the same right, power or privilege in any other instance. Any waiver by FOUNDATION must be in writing.
- 1.16 Relationship of the Parties. Both parties are independent parties and this AGREEMENT will not establish any relationship of partnership, joint venture, employment, agency or otherwise. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided in this AGREEMENT.
- a. Finding of Joint Employment. In the event that PARTICIPANTS are employed under a full-time employee classification and there is a finding by an applicable court of law that a joint-employment relationship exists between FOUNDATION and CUSTOMER, both parties agree that they shall work collaboratively to ensure compliance with all remedial legal obligations, which includes but is not limited to pension enrollment, employer / employee contributions, and defense / indemnity of any claims, administrative actions, litigation, or other proceedings related to pension and fringe benefit obligations.
- 1.17 Force Majeure. FOUNDATION shall not be liable or deemed to be in default for any delay or failure in performance under this AGREEMENT or interruption of Services resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, terrorism, war, strikes, labor disputes, shortages of suitable parts, materials, labor or transportation, pandemic, quarantine, global or local health emergencies, or any similar cause beyond the reasonable control of FOUNDATION.